

**STATE OF RHODE ISLAND AND
PROVIDENCE PUBLIC UTILITIES COMMISSION**

IN RE:

**W. MARK RUSSO, RHODE ISLAND SUPERIOR
COURT APPOINTED SPECIAL MASTER FOR
THOSE CERTAIN PARCELS OF REAL ESTATE
LOCATED AT 300 BOURNE AVENUE,
EAST PROVIDENCE, RHODE ISLAND,
ASSESSOR'S MAP 303, BLOCK 13,
PARCELS 4 AND 5 AND ASSESSOR'S MAP 203,
BLOCK 1, LOT 4**

Docket No. 5193

**PETITIONER'S SUPPLEMENTAL MOTION FOR APPROVAL OF AN AMENDED
SETTLEMENT AGREEMENT, APPROVAL OF PETITION, AND APPROVAL OF
MAINTENANCE AND LICENSE AGREEMENTS WITH THE RAILROAD**

Now comes the Petitioner, W. Mark Russo, Special Master (the "Petitioner"), pursuant to R.I. Gen. Laws § 39-8-1.1, moves the Commission to approve an Amended Settlement Agreement by and between the Petitioner and the State of Rhode Island Division of Public Utilities which Petitioner hopes will allow for approval of the Petition and consummation of a Superior Court ordered sale and redevelopment of the Subject Parcel. The Amended Settlement Agreement is attached hereto as **Exhibit 1**.

In addition, Petitioner and Petitioner's Superior Court-approved buyer, Noble Development, LLC have worked with the Providence & Worcester Railroad Company ("PWRR") to resolve PWRR's Objection to Petitioner's Motion for Approval of Settlement Agreement and Approval of Petition. As a result thereof, the Amended Settlement Agreement has forms of a License Agreement for Private Grade Crossing and a Construction and Maintenance Agreement attached for approval by the Commission.

Petitioner

/s/ W. Mark Russo

W. Mark Russo (#3937) in and only in his capacity as Rhode Island Superior Court-Appointed, Special Master for those certain parcels of real estate located at 300 Bourne Avenue, East Providence, Rhode Island, Assessor's Map 303, Block 13, Parcels 4 and 5 and Assessor's Map 203, Block 1, Lot 4
55 Pine Street, 3rd Floor
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Tel.: (401) 455-1000
Email: mrusso@frlawri.com

Dated: August 2, 2022

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the within was e-mailed to the following on this 2nd day of August, 2022.

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/s/ W. Mark Russo

Exhibit 1

STATE OF RHODE ISLAND
PUBLIC UTILITES COMMISSION

IN RE:

W. MARK RUSSO, RHODE ISLAND SUPERIOR
COURT APPOINTED SPECIAL MASTER FOR
THOSE CERTAIN PARCELS OF REAL ESTATE
LOCATED AT 300 BOURNE AVENUE,
EAST PROVIDENCE, RHODE ISLAND,
ASSESSOR'S MAP 303, BLOCK 13,
PARCELS 4 AND 5 AND ASSESSOR'S MAP 203,
BLOCK 1, LOT 4

Docket No. 5193

AMENDED SETTLEMENT AGREEMENT

I. INTRODUCTION

Petitioner, W. Mark Russo, Special Master, appointed by the Rhode Island Superior Court in and for the Providence County Business Calendar as pursuant to an Order dated August 19, 2014 attached hereto and incorporated by reference herein as *Exhibit A* (the "Superior Court-Appointed, Special Master"), the Superior Court approved buyer of the Subject Property, Noble Development LLC (the "Developer"), and the State of Rhode Island Division of Public Utilities and Carriers (the "Division") have reached an Agreement on the Superior Court-Appointed, Special Master's Petition to Establish a Railroad Crossing attached hereto as *Exhibit B*. Thus, the Division and the Superior Court-Appointed, Special Master jointly request that the State of Rhode Island Public Utilities Commission (the "Commission") approve this Settlement and the rail crossing in accordance with the terms and conditions set forth herein pursuant to R.I.G.L. §39-8-1.1.

Furthermore, as pursuant to R.I.G.L. §39-8-1.3, the parties seek approval of the form of agreements for Providence and Worcester Railroad Company's ("PWRR") entry into a

Construction and Maintenance Agreement attached hereto as *Exhibit C* and a License Agreement for Private Grade Crossing attached hereto as *Exhibit D*.

II. RECITALS

1. On October 4, 2021, the Superior Court-Appointed, Special Master filed a Petition, pursuant to R.I.G.L. §39-8-1.1, to secure approval to cross Providence and Worcester Railroad Company (“P&W”) East Providence Running Track at Mile Post +/- 4.84 where it crosses a private roadway to be constructed (hereinafter, “East Pointe Road”) for the benefit of those certain real estate parcels described in the caption of the Petition (the “Subject Parcels”) via a permanent, private and at-grade crossing (the “Crossing”). See Petition attached hereto as *Exhibit B*.

2. After the Petition was docketed, the Commission scheduled comments from the Division by January 28, 2022, with reply comments being due on February 11, 2022.

3. The Superior Court-Appointed, Special Master and the Division agreed to extend the time for the Division to provide comments. In accordance therewith, the Division contracted with an independent engineer, Pare Corporation (the “Division’s Engineer”), to provide comments on the Final Basis of Design Documents submitted concurrently with the Petition.

4. On May 19, 2022, the Division’s Engineer provided final engineering comments. The final comments that remained unresolved were as follows:

- a. Comment No. 1- The Developer shall provide a survey to show the existing and proposed alignment of the private road to be developed (defined above as “East Pointe Road”);
- b. Comment No. 2- The Developer shall provide proposed signage and striping along the proposed alignment of East Pointe Road;

- c. Comment No. 3- As part of the construction of the Crossing, crossbucks shall be included as part of the flashing light signals/gate item per MUTCD Section 8C.02;
- d. Comment No. 4- Standard details from the MUTCD for each "Proposed Warning Devices/Control Equipment" in Section 2.1 of the Final Basis of Design Documents shall be incorporated into the construction documents to verify the appropriate equipment is being proposed and whether it is constructable at the proposed crossing location;
- e. Comment No. 5- Circuit plans stamped by a Rhode Island professional engineer and associated details shall be submitted for review prior to construction;
- f. Comment No. 6- Construction documents shall include typical roadway section details to demonstrate compliance with the requirements of Section 8.2 of the Manual of Railway Engineering;
- g. Comment No. 7- The Developer shall provide expected types of roadway vehicle and traffic volumes on East Pointe Road for review prior to construction; and
- h. Comment No. 9- During construction, tree clearing is required to meet the site-distance requirements of the FRA Highway Rail Crossing Handbook.

5. After review of these comments, the Division, the Superior Court-Appointed, Special Master and the Developer engaged in settlement discussions.

6. The Developer has agreed to the conditions as conditions of approval. Furthermore, the Developer has agreed that the Division shall retain field oversight authority to ensure that the

above-referenced comments are satisfied as part of the construction at the Developer's cost and expense.

- a. Within the scope of the Division's oversight, should the Developer and Division's Engineer reach an impasse in the field over any construction disagreement, the Division retains the authority to direct the Developer to cease and desist all construction activity and to refer the matter to the Commission for resolution.
- b. The Division's Engineer will provide an estimate for its oversight of the field work and the Developer will place such funds on deposit with the Division. Upon completion of the work and signoff by the Division, any excess funds, if applicable, will be returned to the Developer.

7. The Division, the Superior Court-Appointed, Special Master and the Developer agreed that a Settlement Agreement in the form submitted by the Special Master pursuant to a Motion to Approve, is a just and reasonable resolution of the issues in this proceeding and jointly request its approval along with approval of the relief requested in the Petition by the Commission.

8. The Settlement Agreement is now amended to reflect that the rights and obligations hereunder are expressly conditioned upon the approval of Construction Maintenance Agreement and a License Agreement for Private Grade Crossing by and between PWRR and the Special Master's Court-approved buyer, the forms of which have been finalized in principle as of July 17, 2022, conditioned upon Commission approval.

9. Accordingly, an Amended Settlement Agreement is entered into and provided to the Commission.

III. TERMS OF SETTLEMENT

10. The Division, the Superior Court-Appointed, Special Master and the Developer agree that the following shall be conditions of approval that must be satisfied in regard to the construction of the Crossing:

- a. The Superior Court-Approved Purchaser of the Subject Parcels, Noble Development, LLC (the "Developer") shall provide a survey to show the existing and proposed alignment of East Pointe Road;
- b. The Developer shall provide proposed signage and striping along the proposed alignment of East Pointe Road;
- c. As part of the construction of the Crossing, crossbucks shall be included as part of the flashing light signals/gate item per MUTCD Section 8C.02;
- d. Standard details from the MUTCD for each "Proposed Warning Devices/Control Equipment" in Section 2.1 of the Final Basis of Design Documents shall be incorporated into the construction documents to verify the appropriate equipment is being proposed and whether it is constructable at the proposed Crossing location;
- e. Circuit plans stamped by a Rhode Island professional engineer and associated details shall be submitted for review prior to construction;
- f. Construction documents shall include typical roadway section details to demonstrate compliance with the requirements of Section 8.2 of the Manual of Railway Engineering;
- g. The Developer shall provide expected types of roadway vehicle and traffic volumes on East Pointe Road for review prior to construction; and

h. During construction, tree clearing shall be required to meet the site-distance requirements of the FRA Highway Rail Crossing Handbook.

11. The Division shall retain field oversight authority to ensure that the above-referenced comments are satisfied as part of the construction at the Developer's cost and expense.

12. In addition, the Developer and PWRR are agreeable to execute a Construction Maintenance Agreement and a License Agreement for Private Grade Crossing in the form attached hereto as *Exhibits C* and *D*, respectively, conditioned upon Commission approval.

IV. EFFECT OF SETTLEMENT

13. This Amended Settlement Agreement is a negotiated agreement.

14. The terms of this Amended Settlement Agreement shall not be construed as an agreement to any matter of fact or law beyond the terms hereof.

15. This Amended Settlement Agreement was reached to expedite the economic development embodied within a Superior Court-Approved sale of the Subject Parcels for development pursuant to *Geonova Development Co., Inc. v. The City of East Providence, C.A. NO. PB-2009-5341*.

16. At the same time, the Amended Settlement Agreement was reached to retain and enforce the highest degree of safety in constructing the Crossing with continued oversight by the Division at the Developer's cost and expense.

17. The Parties to this settlement request that the Commission approve the Amended Settlement Agreement, approve the Crossing as requested in the Petition with the terms and conditions contained herein being terms and conditions of approval, and approve the forms of Agreement to be entered into by the Developer and PWRR.

IN WITNESS WHEREOF, the Parties agree that this Settlement Agreement is reasonable, in the public interest, in accordance with applicable law and regulatory policy, and is executed by the respective representatives, each being authorized to do so.

Petitioner,

The Division of Public Utilities and
Carriers by,

/s/ W. Mark Russo

W. Mark Russo (#3937) in and only in his capacity as Rhode Island Superior Court-Appointed, Special Master for those certain parcels of real estate located at 300 Bourne Avenue, East Providence, Rhode Island, Assessor's Map 303, Block 13, Parcels 4 and 5 and Assessor's Map 203, Block 1, Lot 4

Ferrucci Russo Dorsey P.C.

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Providence, RI 02903

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Email: mrusso@frrlawri.com

Noble Development, LLC, agreeing to and being subject to the terms and conditions herein by their attorney,

/s/ Linda D. George

Linda D. George, Administrator
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/s/ Joshua Berlinsky

Joshua Berlinsky (#6903)

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Dated: ~~July 20, 2022~~

August 2, 2022

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the within was e-mailed to the following on this ~~xx day of July, 2022~~ 2nd day of August, 2022.

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/s/ W. Mark Russo

Exhibit A

COPY

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

GEONOVA DEVELOPMENT CO., INC. :

VS. :

C.A. NO. PB 09-5341

THE CITY OF EAST PROVIDENCE :

ORDER APPOINTING SPECIAL MASTER

Plaintiff, Geonova Development Co., Inc. ("GeoNova") and Defendant, The City of East Providence ("East Providence") hereby consent to the entry of an Order appointing a Special Master with regard to the former Ocean State Steel Property at East Pointe (the "Subject Property") for the specific purpose of implementing, supervising and bringing to conclusion a Confidential Settlement Agreement entered into by and between Geonova and East Providence.

Upon consideration by the Court and pursuant to the parties' consent, it is hereby

ORDERED, ADJUDGED and DECREED:

1. W. Mark Russo, Esq., of Ferrucci Russo P.C., 55 Pine Street, Providence, Rhode Island shall be and is hereby appointed Special Master (the "Special Master") of the Subject Property for the purpose of implementing, supervising and bringing to conclusion a Confidential Settlement Agreement by and between the parties.

2. The Subject Property is defined in Exhibit A to the East Pointe Property Development and Finance Agreement dated September 26, 2003, and shall include all rights and entitlements relative to the Subject Property, including all permits, approvals, licenses and all such other related entitlements secured pursuant to the development of the Subject Property as outlined in the underlying pleadings (the "Permits and Approvals"). Moreover, all such Permits and Approvals shall be tolled during the term of the Special Mastership.

3. The Special Master is authorized to take possession and charge of the Subject Property, including any and all Permits and Approvals, books and/or records relative to the Subject Property and to preserve the same until further order of this Court.

4. The Special Master shall maintain possession of the Confidential Settlement Agreement executed by the parties. The Confidential Settlement Agreement shall remain with the Special Master and remain confidential pending complete performance and the termination of the Special Master's appointment.

5. The said Special Master shall, no later than five (5) days from the date hereof, file a bond in the sum of \$10,000.00 with any surety company authorized to do business in the State of Rhode Island as surety thereon, conditioned that the Special Master will well and truly perform the duties of said office and duly hold, in trust for the benefit of the parties to this action, and others as may be directed by the Court, all monies and property which may come into the Special Master's hands and account for all such monies and property and abide by and perform all things which the Special Master will be directed to do by this Court.

6. The Special Master is granted and shall have all powers and authorities necessary to commence, supervise and bring the terms and conditions of the Confidentiality Settlement Agreement to conclusion, including authority to incur expenses in the Mastership's discretion, as may be desirable or necessary to complete the undertakings set forth herein.

7. That the Special Master shall continue to discharge said Special Master's duties and trusts hereunder until further order of this Court; that the right is reserved to the Special Master and to the parties hereto to apply to this Court for any other or further instructions to said Special Master and that this Court reserves the right, upon such Notice, if any, as it shall deem

proper, to make such further orders herein as may be proper, and to modify this Order from time to time.

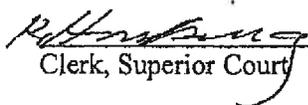
8. Pursuant to this Court's equitable authority, this Court finds that the designation of the afore-described person for appointment as Special Master herein is warranted and required because of the Special Master's specialized expertise and experience in in administrating non-routine, Special Masterships which involve unusual or complex legal, financial, or business issues.

9. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against the Subject Property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, stockholder, corporation, partnership or any other person, or the levy of any attachment, execution of other process upon or against the Subject Property, or the taking or attempting to take into possession the Subject Property, or the cancellation at any time during the Special Mastership proceeding herein of any insurance policy, lease or other contract with regard to the Subject Property, by any of such parties as aforesaid, other than the Special Master designated as aforesaid, or the termination of telephone, electric, gas or other utility service to the Subject Property, by any public utility, without prior approval thereof from this Honorable Court, in which connection said Special Master shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court. This paragraph shall not apply to prosecution of this action by the parties to this action. This order is without prejudice to and with reservation of all

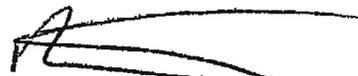
rights of the parties to take discovery, make motions, and to otherwise prosecute the claims and defenses in this action.

10. The Special Master shall give notice of this Order by mailing, on or before September 8th, 2014, a copy of said Order appointing Special Master to each person or entity who has a lien, claim or encumbrance on the Subject Property whose address is known or may become known to the Special Master.

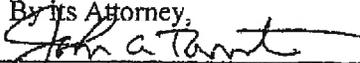
BY ORDER:

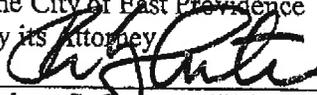

Clerk, Superior Court

ENTER:


Judge Michael A. Silverstein
8/19/2014

Submitted by:

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By its Attorney,

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The City of East Providence
By its Attorney,

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Dated: ~~May 18~~ ^{August} 2014

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Exhibit B

STATE OF RHODE ISLAND AND
PROVIDENCE PUBLIC UTILITIES COMMISSION

IN RE:

W. MARK RUSSO, RHODE ISLAND SUPERIOR
COURT APPOINTED SPECIAL MASTER FOR
THOSE CERTAIN PARCELS OF REAL ESTATE
LOCATED AT 300 BOURNE AVENUE,
EAST PROVIDENCE, RHODE ISLAND,
ASSESSOR'S MAP 303, BLOCK 13,
PARCELS 4 AND 5 AND ASSESSOR'S MAP 203,
BLOCK 1, LOT 4

Docket No. _____

**PETITION OF W. MARK RUSSO, SPECIAL MASTER
TO ESTABLISH A RAILROAD CROSSING**

Now comes the Petitioner, W. Mark Russo, Special Master (the "Petitioner"), pursuant to R.I. Gen. Laws § 39-8-1.1, seeking approval to cross Providence and Worcester Railroad Company ("P&W") East Providence Running Track at Mile Post +/- 4.84, where it crosses a private roadway to be constructed for the benefit of the above-described parcels via a permanent, private and at-grade crossing (the "Crossing"), as set forth in the Final Basis of Design Documents attached hereto and incorporated by reference herein as Exhibit A (the "Final Basis of Design Documents").

In turn, Petitioner seeks authorization, pursuant to R.I. Gen. Laws §38-8-1.3, for entrance into a Crossing and Maintenance Agreement as set forth below, pursuant to R.I. Gen. Laws §39-8-1.3.

As grounds for said Petition, Petitioner states as follows:

I. PARTIES

1. Petitioner, W. Mark Russo is a Special Master appointed by the Rhode Island Superior Court in and for the Providence County Business Calendar as pursuant to an Order dated August 19, 2014 attached hereto and incorporated by reference herein as Exhibit B.

2. P&W is the owner/operator of the proposed Crossing.

3. Rhode Island Department of Transportation ("RIDOT") is a lessor of the underlying property which is leased by P&W to operate the East Providence Running Track.

II. FACTS

A. Background Facts

4. The Special Master in accordance with the appointment orders of the Rhode Island Superior Court, holds Court-supervised right, title and interest in real estate located at 300 Bourne Avenue, East Providence, Rhode Island, Assessor's Map 303, Block 13, Parcels 4 and 5 and Assessor's Map 203, Block 1, Lot 4 (the "Subject Parcels").

5. The Special Master was appointed by the Rhode Island Superior Court, Justice Brian P. Stern presiding, to oversee the marketing, sale and development of the Subject Parcels.

6. The Special Master has secured a buyer for the property, Noble Development, LLC ("Noble"), whose development plan as subject to Court Order, is contingent upon and subject to the approval of an at grade, private rail crossing. See Sale Order dated August 4, 2020 attached hereto and incorporated by reference herein as Exhibit C. (Purchase and Sale Agreement at ¶21(5)).

7. As pursuant to Court Order dated October 22, 2020 incorporated by reference herein as Exhibit D, the Special Master secured the consensus of the Rhode Island Superior Court, P&W, Noble, and RIDOT to pursue the Crossing.

8. In accordance therewith, Noble under Agreement with P&W, secured the services of Alfred Benesch & Company (the "Project Engineer") to develop Final Basis of Design Documents for the Crossing which are attached hereto as **Exhibit A**.

9. In accordance with the Court Order dated October 22, 2020 and attached hereto **Exhibit D**, P&W and Noble are finalizing Crossing and Maintenance Agreements to be executed subject to the Commission's approval as pursuant to R.I. Gen. Laws §9-8-1.3.

10. Accordingly, the Special Master is in position to seek approval of the Commission for a surface rail crossing to be developed in accord with the Final Basis of Design Documents.

B. Operative Facts

11. In 1989, Ocean State Steel Inc. ("Ocean State Steel") secured the rights to establish and maintain an at grade, rail crossing on the Subject Parcels at Baseline Station 14+42±, (the "Original Crossing"). *See* March 15, 1989 Agreement attached hereto as **Exhibit E**.

12. In May of 1994, Ocean State Steel ceased its business operations, but entered into an agreement with Providence and Worcester Railroad Company to preserve the Original Crossing and enable the Original Crossing to be utilized by successors. *See* Agreement dated November 8, 1996 attached hereto as **Exhibit F**.

13. In accord with the 1986 Railroad Operating Agreement, which is attached hereto as **Exhibit G**, RIDOT which takes the first step in formally re-establishing the Original Crossing.

14. The Special Mastership submitted a written request to RIDOT to determine whether RIDOT had any objection under the 1986 Railroad Operating Agreement. RIDOT has communicated that they do not have any such objection. *See* Special Master's correspondence

dated August 7, 2020 and RIDOT response e-mail dated August 13, 2020 attached hereto as Exhibit H.

15. Thereafter, on October 22, 2020, the Rhode Island Superior Court entered an Order directing the Special Master to proceed. *See* Amended Consent Order is attached hereto as Exhibit D.

16. In accordance with said Amended Order entered by the Rhode Island Superior Court, P&W and the other stakeholders support this Petition.

17. As set forth above, Noble and P&W are in the process of finalizing Crossing and Maintenance Agreements. Entry into such Agreements awaits the Commission's approval pursuant to R.I. Gen. Laws §39-8-1.3.

18. The Special Master submits that the grant of this Petition is in the public interest and in accordance with law and regulatory policy.

19. If permission is granted by the Commission and Noble thereafter constructs the Crossing, the Special Master by Court Order shall ensure construction of the Crossing in accordance with the Final Basis of Design Documents and the P&W agreements.

WHEREFORE, your Petitioner prays that this Honorable body grant Petitioner and P&W permission, in accord with executed Crossing and Maintenance Agreements, to construct a permanent private at-grade Crossing of the rail line and to construct thereon certain improvements necessary to cross the Rail Line, as well as other improvements incidental thereto, all in the form and manner depicted in the final basis of design documents and in the general location described therein.

Petitioner

/s/ W. Mark Russo

W. Mark Russo (#3937) in and only in his capacity
as Special Master for those certain parcels of real
estate located at 300 Bourne Avenue, East
Providence, Rhode Island, Assessor's Map 303,
Block 13, Parcels 4 and 5 and Assessor's Map 203,
Block 1, Lot 4,

Dated: October 14, 2021

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the within was e-mailed to the following on this 14th day of October, 2021.

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Providence, RI 02903
stephen.devine@dot.ri.gov

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Administrator
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Division of Public Utilities and Carriers
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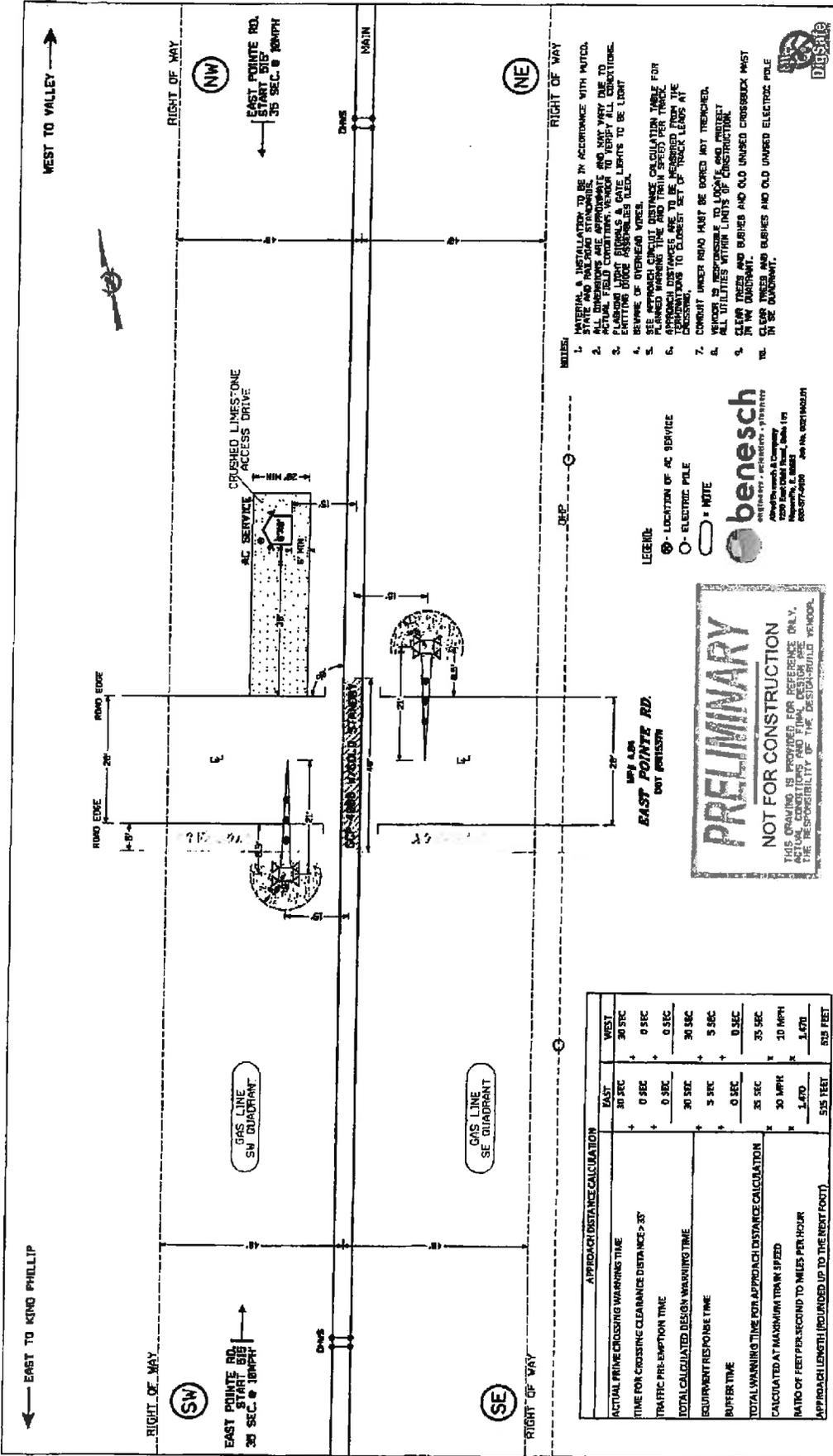
Robert Corrente
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Providence, RI 02903
Michael.marcello@lewisbrisbois.com

John Dorsey
55 Pine Street, 3rd Fl.
Providence, RI 02903
jdorsey@frlawri.com

/s/ W. Mark Russo

Exhibit A



APPROACH DISTANCE CALCULATION	
WEST	30 SEC
EAST	30 SEC
TIME FOR CROSSING CLEARANCE DISTANCE > 35'	0 SEC
TRAFFIC PRE-EMPTION TIME	0 SEC
TOTAL CALCULATED DESIGN WARNING TIME	30 SEC
EQUIPMENT RESPONSE TIME	5 SEC
BUFFER TIME	0 SEC
TOTAL WARNING TIME FOR APPROACH DISTANCE CALCULATION	35 SEC
CALCULATED AT MAXIMUM TRAIN SPEED	30 MPH
RATIO OF FEET PER SECOND TO MILES PER HOUR	1.470
APPROACH LENGTH (ROUNDED UP TO THE NEXT FOOT)	518 FEET

1. MATERIAL & INSTALLATION TO BE IN ACCORDANCE WITH NOTED STATE AND RAILROAD STANDARDS.
2. ALL UTILITIES TO BE LOCATED AND NOTED IN FIELD PRIOR TO CONSTRUCTION.
3. FLAGGING LIGHT SIGNALS & GATE LEAVES TO BE LIGHT BEARING OF OVERHEAD WIRES.
4. BEARING OF OVERHEAD WIRES.
5. APPROACH DISTANCES ARE TO BE INCREASED FROM THE DESIGNATIONS TO CLOSEST SET OF TRACK LEAVES AT DESIGNATED CROSSING.
6. APPROACH DISTANCES ARE TO BE INCREASED FROM THE DESIGNATIONS TO CLOSEST SET OF TRACK LEAVES AT DESIGNATED CROSSING.
7. CONCRETE UNDER ROAD MUST BE DORED NOT TRENCHED.
8. ALL UTILITIES WITHIN LAYOUT OF CONSTRUCTION.
9. CLEAR TREES AND BUSHES AND OLD UNUSED CROSSBOCK MUST BE REMOVED.
10. CLEAR TREES AND BUSHES AND OLD UNUSED ELECTRIC POLE MUST BE REMOVED.

benesch
 ENGINEERS, ARCHITECTS, PLANNERS
 1200 East 12th Street, Suite 100
 Denver, CO 80202
 303.733.4400

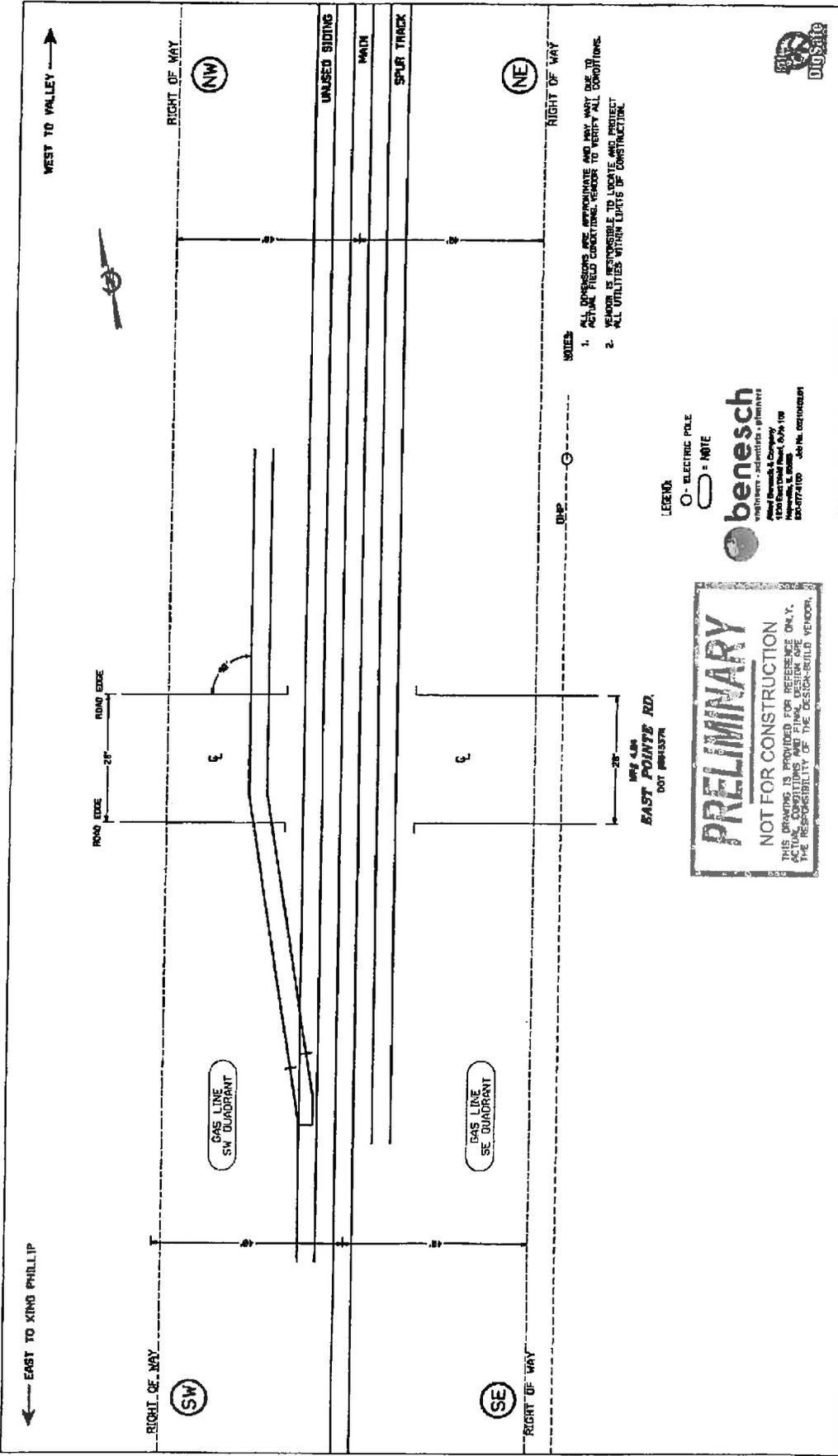
PROVIDENCE AND WORCESTER RAILROAD
 DRAWN BY: TCS
 CHECKED BY: BWS
 DATE: 8/15/21
 EAST POINTE DEVELOPMENT
 CLIMBER AND, PROVIDENCE, RI
 DOT#681537N MILEPOST#4.84
 DRAWING NO. PW220804-H01
 SHEET #1 OF 01



PRELIMINARY
 NOT FOR CONSTRUCTION
 THIS DRAWING IS PROVIDED FOR REFERENCE ONLY. ACTUAL CONDITIONS AND FINAL DESIGN ARE THE RESPONSIBILITY OF THE DESIGN-BUILD VENDOR.

REVISIONS	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

THE OPERATION OF THE BUSSES AND EQUIPMENT REPRESENTED HEREIN CANNOT BE FULLY CHECKED UNTIL CONSTRUCTION IS COMPLETE. THE DESIGN-BUILD VENDOR SHALL BE RESPONSIBLE FOR THE SAFETY OF THE OPERATIONAL TESTS AND BEING PLACED IN REGULAR OPERATION.



- NOTES:
1. ALL DIMENSIONS ARE APPROXIMATE AND MAY VARY DUE TO ACTUAL FIELD CONDITIONS. VENDOR TO VERIFY ALL CONDITIONS.
 2. VENDOR TO VERIFY ALL LOCATIONS AND PROTECT ALL UTILITIES WITHIN LIMITS OF CONSTRUCTION.

LEGEND:

- = ELECTRIC POLE
- = NOTE

benesch
 ENGINEERS - ARCHITECTS - PLANNERS
 1000 Main Street, Suite 100
 Providence, RI 02902
 TEL: 401-843-1100 FAX: 401-843-1101

PRELIMINARY
 NOT FOR CONSTRUCTION
 THIS DRAWING IS PROVIDED FOR REFERENCE ONLY. FACTUAL CONDITIONS MAY VARY. DESIGN ARE THE RESPONSIBILITY OF THE DESIGN-BUILD VENDOR.

DRAWING NO. PWR220484_H02	
DRAWING TITLE EAST POINTE DEVELOPMENT CUMBERLAND, PROVIDENCE, RI DOT#R61537N MILEPOST#4.84	
DATE: 8/18/21	DATE: 8/18/21
CHECKED BY: []	CHECKED BY: []
DESIGNED BY: []	DESIGNED BY: []
DATE: 10/04/21	DATE: 10/04/21

THE OPERATION OF THE CRANE AND EQUIPMENT REPRESENTED HEREIN IS LIMITED TO THAT WHICH IS AUTHORIZED TO PERFORM AND COMPLETE CONSTRUCTION OF THE PROJECT. SUBSTITUTES MUST BE GIVEN OPERATIONAL TESTS BEFORE BEING PLACED IN REGULAR OPERATION.

PROVIDENCE AND WORCESTER RAILROAD

DATE: 8/18/21

PROVIDENCE AND WORCESTER RAILROAD



RAILROAD/HIGHWAY GRADE CROSSING SITE SURVEY

RAILROAD NAME: Providence & Worcester Railroad Company (PW)

LOCATION: East Pointe Development, East Providence, RI

PROJECT#:	RR#	21PWRZ01R	PID#	
-----------	-----	-----------	------	--

SURVEYED BY: ADR DATE: 05/11/2021

ROADWAY: East Pointe Rd. DOT#: 861537N

SUBDIVISION: East Providence Running Track MILEPOST: 4.84

REGION: Northern SPEED: 10 mph

LATITUDE: 41.840486 LONGITUDE: -71.368644

NEAREST ADDRESS: 293 Bourne Ave Pawtucket, RI 02916

REVISED: _____

PROJECT SCOPE (PER AGENCY ORDER/DRTS FINDINGS):

New At-Grade Crossing Surface, FLS&G and Track Reconfiguration.

RAILROAD CONCERNS/SCOPE ADJUSTMENTS:

Removal of the East Side Spur Track to be determined. Provide in service testing, insulation, relay, and annual test.

SURVEY ATTENDEES:

Name	Title	Company	Email/Phone
<i>J. W. [unclear]</i>	<i>Track [unclear]</i>	<i>Ber [unclear]</i>	<i>978-494-3069</i>
<i>Richard Peccari</i>	<i>President</i>	<i>Chubb & Bawle</i>	<i>401-639-6002</i>
<i>LYN SMALL</i>	<i>Project Manager</i>	<i>Northeast Engineers</i>	<i>401-845-0810</i>
<i>Paul Bannon</i>	<i>BETA Group/Reg [unclear]</i>	<i>London [unclear]</i>	<i>pbannon@beta-inc.com</i>
<i>Brian Cutler</i>	<i>Director</i>	<i>GPW</i>	<i>508-822-1740</i>
<i>A. DELOS-REYES</i>	<i>PM</i>	<i>Ber [unclear]</i>	<i>(804) 305-2815</i>



SECTION 2 - PROPOSED WARNING DEVICES

2.1 - PROPOSED WARNING DEVICES/CONTROL EQUIPMENT

Signage	Quantity	Description
Crossbucks	-	
Stop Signs	-	
Yield Signs	-	
Track Signs	2	
SORS	-	
ENS/DOT	2	12"x9" ENS signs w/DOT #
NLT/NRT	-	
Equipment	Quantity	Description (Mast size, lens size, orientation, etc.)
Flashing Lights	-	
Flashing Lights and Gates	2	2 way signal lights w/12" LED
Cantilevers	-	
Cant/Gate Combo	-	
Bells	1	Or depending on State Standard
Bridge Signals	-	
Signal Enclosure	1	pre-wired 6'x6' shelter w/climate control
Highway/Rail grade crossing warning equipment type	2	GCP-4000 w/ cold standby

NOTES:

Sear II Event Recorder, cellular CRTU monitoring system, 2 banks (12 batteries) GNB backup batteries, 425Ah min. S-60 gate mech, gate arms w/LED lights and vertical stripes. Track shunt enclosures. DTMF controller, New "Do Not Stop On Tracks" sign.

- 2.2 - TYPE OF FOUNDATIONS TO BE USED: Augured in or S2
- 2.3 - ARE FOUR QUADRANT GATES TO BE INCLUDED: No
 If yes, specify exit gate delay/dwell time: _____
- 2.4 - ARE SIDELIGHTS REQUIRED: No
 If yes, specify street/distance from track/quadrant: _____
- 2.5 - CROSSING CONTROL EQUIPMENT TERMINATION: DHWS
- 2.6 - ADDITIONAL EQUIPMENT RECOMMENDED: Recorder, DTMF, OOS Jumpers
- 2.7 - IS ADDITIONAL FILL MATERIAL REQUIRED: Yes
 If yes, specify quadrant/estimate quantity: RR Spec Ballast.
- 2.8 - BERM/CRIB WALL/PLATFORM REQUIRED: No

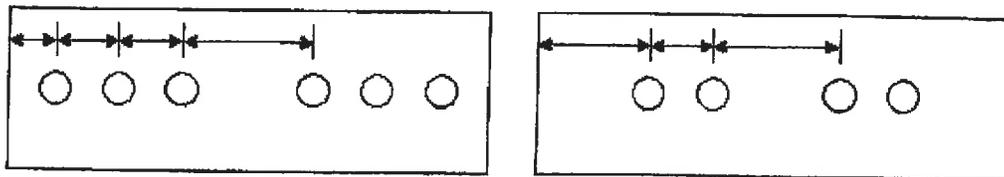


SECTION 3 – TRACK AND RAIL

3.1 - PROPOSED WARNING DEVICES/CONTROL EQUIPMENT

Track	Rail Weight	CWR	JT	Bond Type	Track Speed	Track Control	Rusty Rail	Ballast Condition
Mainline	115	-	Yes	-	10 MPH	-	No	Poor
Siding	115	-	Yes	-	10 MPH	-	Yes	Poor
Siding	115	-	Yes	-	10 MPH	-	Yes	Poor
Industry	-	-	-	-	-	-	-	-
Storage	-	-	-	-	-	-	-	-

NOTE: All joints are to be double bonded (Head and Web).
 SPECIFY INSULATED JOINT DIMENSIONS AND TYPE: NONE PRESENT



3.2 - ARE COMP JOINTS PRESENT:

No _____

If yes, show location and sizes on FIELD SKETCH.

3.3 - DO SWITCHES REQUIRE INSULATION:

No _____

If yes, show switches on FIELD SKETCH.

3.4 - ANY SHUNT-TYPE SWITCHES:

No _____

If yes, describe type and show on FIELD SKETCH:

3.5 - SHUNT ENHANCEMENT REQUIRED:

No _____

If yes, specify type:

3.6 – DO BALLAST CONDITIONS AFFECT INSTALLATION?

Yes _____

3.7 – HAS A BALLAST STUDY/READING BEEN PERFORMED TO DETERMINE THE BALLAST RESISTANCE?

No _____

If yes, attach a copy of the results.

3.8 – HAS A SPECTRUM FREQUENCY ANALYSIS BEEN PERFORMED?

No _____

If yes, attach a copy of the results.



3.9 – IS THE PROPOSED CROSSING LOCATED IN SIGNAL TERRITORY?

No

If yes, describe/attach a copy of the plans, CP, Approach signal(s), HWD, DED, and Rock Slide Detection Fences.

3.10 – ARE THERE ANY EXISTING TRACK CIRCUITS?

No

If yes, describe type/attach a copy of the plans.

3.11 – ARE THERE ANY TIE-INS OR MODIFICATIONS TO EXISTING CROSSINGS OR SIGNAL SYSTEMS?

No

If yes, describe/attach a copy of the plans.

3.12 – ARE THERE ANY OVERLAPS IN APPROACHES WITH EXISTING CROSSINGS?

No

If yes, describe/attach a copy of the plans.

3.13 – ARE THERE ANY SPECIAL TRAIN MOVES OR REGULAR STOPPING OR SWITCHING IN THE PROPOSED APPROACHES?

No

If yes, describe:

3.14 – ARE THERE ANY QUIET ZONE REQUIREMENTS IN PROPOSED AREA OF CROSSING?

No

If yes, describe:

3.15 – ARE THERE ANY ELECTRONIC (e.g. NO TURN, DO NOT STOP ON TRACK) SIGNS REQUIRED?

No

If yes, describe and show on FIELD SKETCH:

3.16 – ARE THERE ANY SPECIAL DPU/STATE SPEED RESTRICTIONS FOR CROSSING?

Verify RI Standards

If yes, describe:

3.17 – ARE THERE DAXing REQUIREMENTS FOR THIS OR ADJACENT CROSSINGS?

No

If yes, describe:



SECTION 4 – POLELINE

4.1 - ARE RAILROAD POLELINES PRESENT: No

If no, skip to section 5.

4.2 - REMOVE ABANDONED POLELINE: No

If yes, specify number of spans to be removed: _____

Will Underground conduit/cable be required as a suitable replacement: _____

Will an interim scheme be needed until the suitable replacement is in place? _____

SECTION 5 – PRE-EMPTION

5.1 - PRE-EMPTION CIRCUITRY REQUIRED: No

If no, skip to section 6.

If yes, specify name, distance and direction to intersection: _____

If yes, specify type of, distance and direction to traffic signal controller cabinet: _____

If yes, specify type of interface, relay, electronic, communication protocol, etc.: _____

If yes, specify cable (6 twisted pair), routing and distance to traffic signal controller cabinet: _____

If yes, specify interface names applicable to traffic signal controller cabinet, AP, SP, Isl Occ, GD, GU, and/or Health: _____

5.4 - AUTHORIZING AGENCY: Noble Development LLC and G&W Railroad

5.5 - ROADWAY TRAFFIC ENGINEER: TBD

5.6 - DATE OF REQUIREMENT: TBD



SECTION 6 – JOINT RAILROAD

6.1 - IS TRACK LEASED FROM ANOTHER RAILROAD: No

If yes, specify railroad and division of maintenance: _____

6.2 - DOES ANOTHER RAILROAD OPERATE AT CROSSING: No

6.3 - ANY JOINT FACILITIES WITHIN ONE MILE: No

If yes, specify railroad and division of maintenance: _____

SECTION 7 – UTILITIES

7.1 - IS COMMERCIAL POWER AVAILABLE: Yes

Specify location of nearest pole: Bourne Ave or New Development Design

7.2 - POWER COMPANY NAME/CONTACT INFORMATION: National Grid

7.3 - NEW METER SERVICE REQUIRED: Yes

If no, specify existing meter number: Yes, for 240V single phase, 100-amp panel

7.4 - EXISTING UTILITY INFORMATION: N/A

Company Name	Type of Utility	Phone Number	Conflicts
	Electric		

7.5 - DESCRIBE ANY OVERHEAD UTILITY CONFLICTS: None

7.6 - DESCRIBE ANY UNDERGROUND UTILITY CONFLICTS: None

7.7 - UTILITIES PARALLEL TO TRACKS: Yes

7.8 - NEAR COMMERCIAL HIGH-TENSION LINES: Yes – 36' East of Track

7.9 - NEAR COMMERCIAL SUBSTATIONS: No



SECTION 8 – OBSTRUCTIONS

8.1 - OBSTRUCTIONS TO VISIBILITY OF DEVICES: Trees, Bushes, unused old Electric Pole on the West side and an old unused Crossbuck Mast on the West side.

If no, skip to section 9.

8.2 - SOLUTION FOR OBSTRUCTION (PROVIDE CONTACT INFORMATION FOR OWNER):
Remove all.

SECTION 9 – ROADWAY DATA

9.1 - TYPE OF ROADWAY SURFACE: Asphalt

If different, specify crossing surface type: _____

9.2 - EXISTING ROADWAY WIDTH: 28'

If present, specify shoulder width: _____

9.3 - PROPOSED ROADWAY WIDTH: 40'

If present, specify shoulder width: _____

9.4 - CROSSING ANGLE: 90 Degrees

9.5 - VEHICLE SPEED: N/A

9.6 - IS CURBING PRESENT/REQUIRED: No

9.7 - ARE SIDEWALKS PRESENT: No

If yes, will they interfere with warning devices: _____

9.8 - ARE PEDESTRIAN GATES REQUIRED: Possible or As Designed.



SECTION 10 – SITE INFORMATION

10.1 - ENCROACHMENTS WITHIN RR PROPERTY: No

If yes, describe, photograph, and include on FIELD SKETCH:

10.2 - WILL TOPOGRAPHY AFFECT INSTALLATION: No

If yes, describe, photograph, and include on FIELD SKETCH:

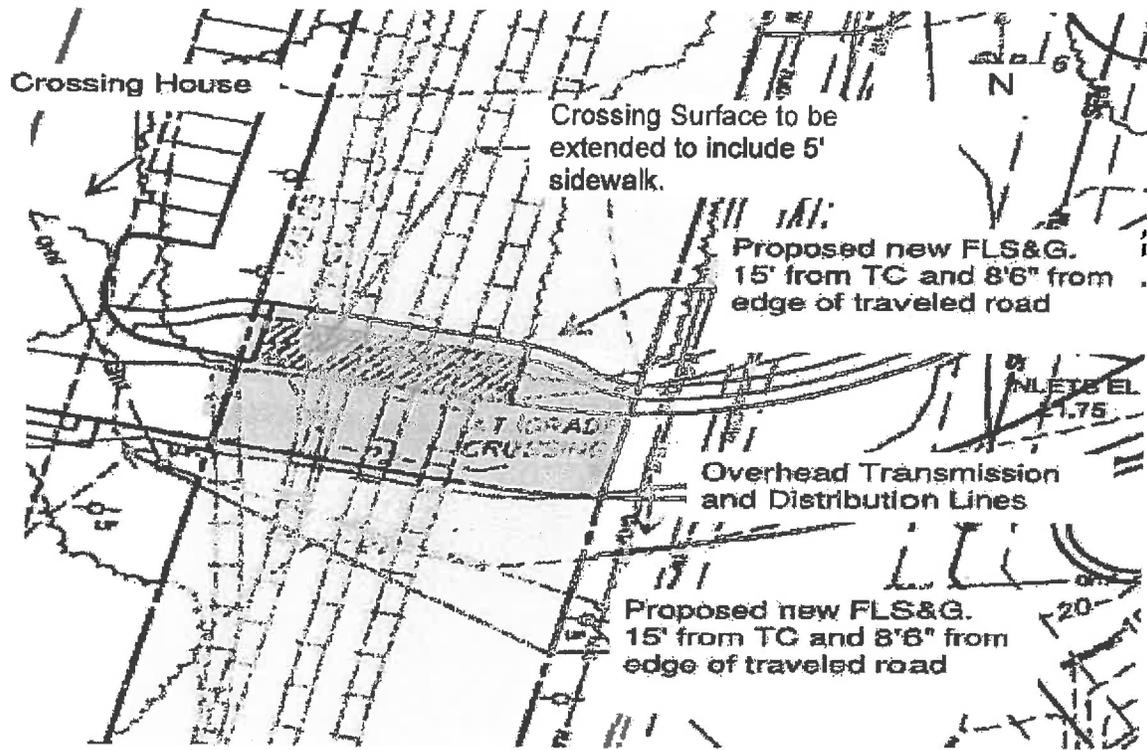
10.3 - WILL DRAINAGE BE AFFECTED: N/A

If yes, describe, photograph, and include on FIELD SKETCH:

10.4 - CULVERTS BE EXTENDED/RELOCATED/REQUIRED: N/A

10.5 - CONDUIT LENGTH REQUIRED: Vendor to field verify

10.6 - SITE SKETCH:





10.7 - ADDITIONAL COMMENTS/DETAILS/CONFLICTS:

Gas Line exists 14' North of the Railroad Bridge, south of the crossing and 30' from the West side Rail.
Provide composite 15-C signal cable (12C#9 solid & 3C#6 solid), #6 Duplex cable, track circuit cable w/red
marker, track circuit double bonding rail joints, railhead & web bonds exposed for inspection, W-10
Advanced Warning Signs w/post, ENS signs w/DOT (DOT # to follow) and report emergency number
1-800-834-5033. Provide Stone dressing, 1-1/4" washed stone.

10.8 - NE QUADRANT:

Proposed Crossing House, 30' from edge of traveled road and 15' from TC.
Clear Trees and Bushes.

10.9 - NW QUADRANT:

New FLS&G
Clear Trees and Bushes and an old unused Crossbuck Mast

10.10 - SE QUADRANT:

New FLS&G
Clear Trees and Bushes and an old unused Electric Pole (Not part of a RR Pole Line)

10.11 - SW QUADRANT:

None



SECTION 11 – PHOTO LOG

Image #	Description	QUAD	Direction
001	NW Quadrant		
002	NE Quadrant		
003	SW Quadrant and Old Electrical Pole		
004	SE Quadrant and Overhead Lines		
005	Gas Line		
006	Joint, Ties and Ballast Condition		
007			
008			
009			
010			
011			
012			
013			
014			
015			
016			
017			
018			
019			
020			
Continued on next page			



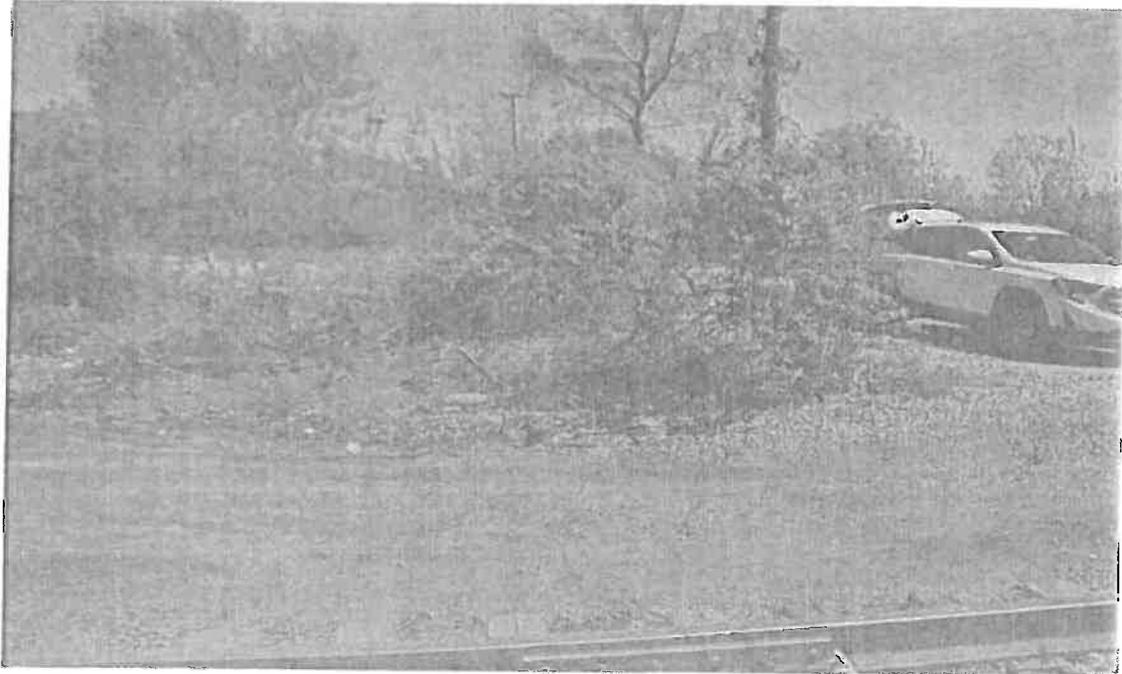
SECTION 11 – PHOTO LOG

Image #	Description	QUAD	Direction
(cont.)			
021			
022			
023			
024			
025			
026			
027			
028			

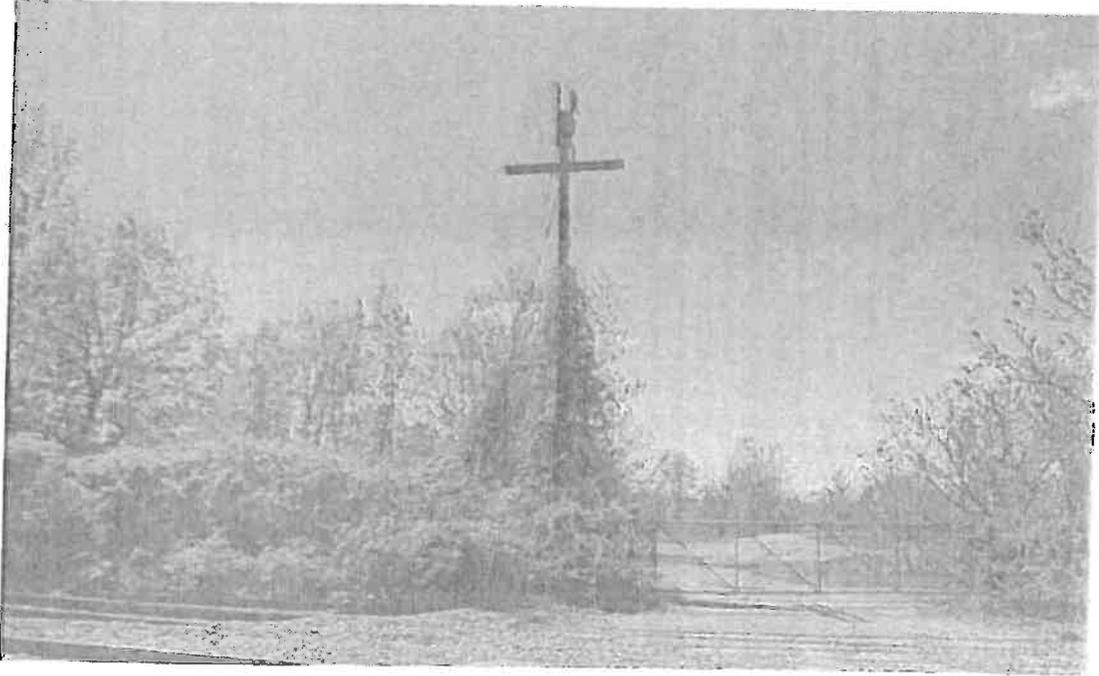
01. NW Quadrant



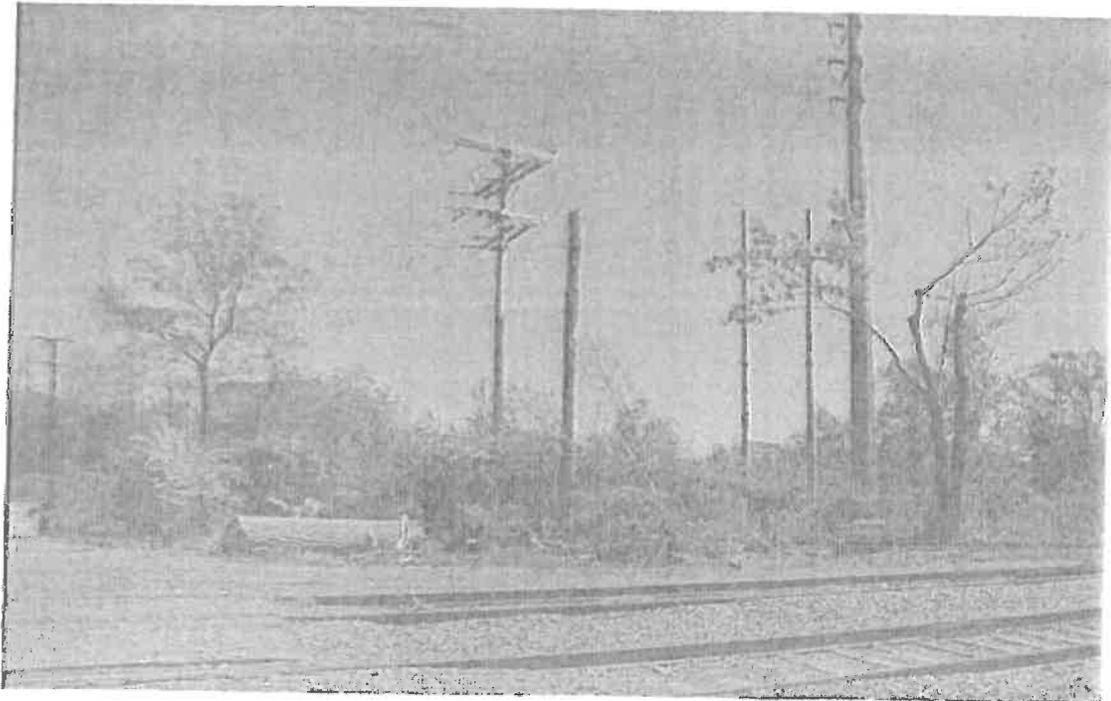
02. NE Quadrant



03. SW Quadrant and Old Electrical Pole



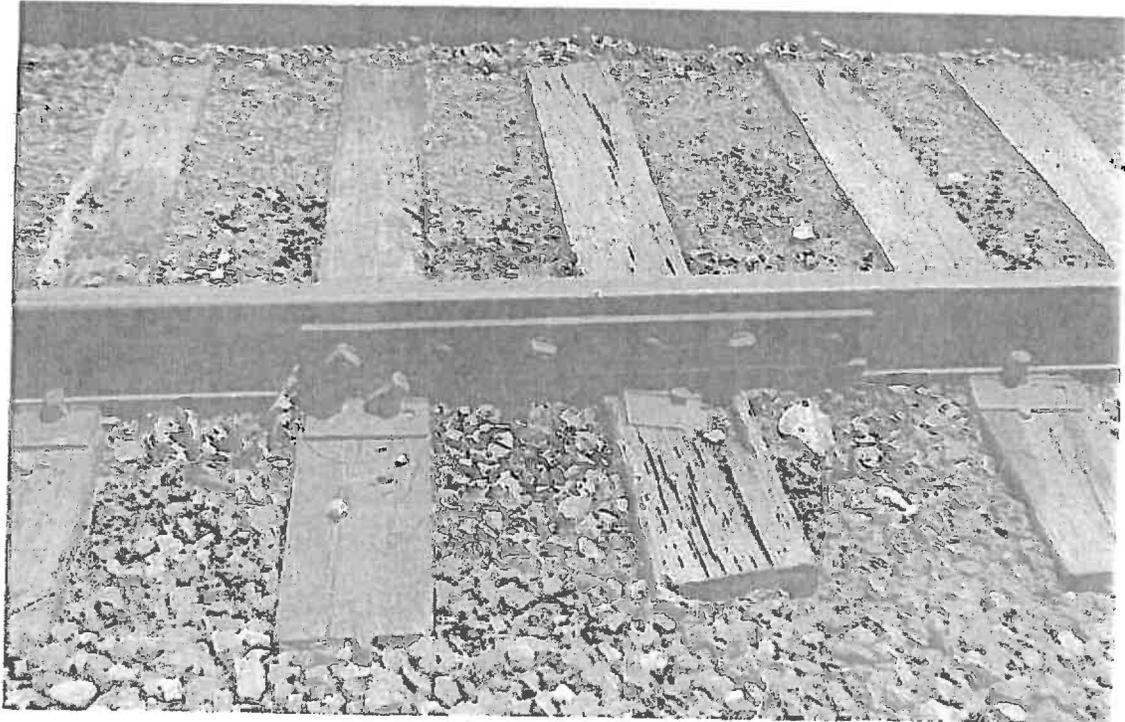
04. SE Quadrant and Overhead Lines



05. Gas Line



06. Joint, Ties and Ballast Condition

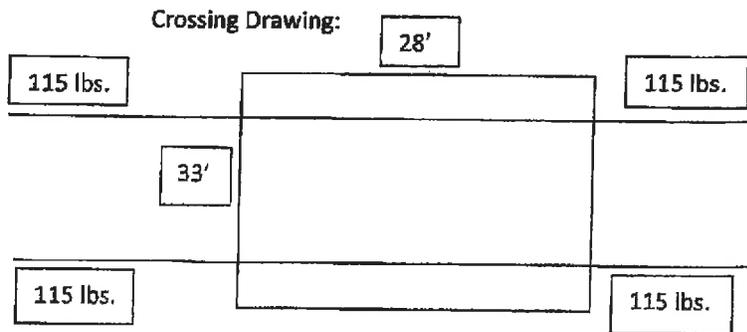


Northern Region Crossing Information

Railroad: P&W Subdivision: East Providence
 Crossing Name: PRIVATE CROSSING - East Pointe Development Dot #: 861537N
 City, County, Borough, Township: Pawtucket, Providence County, Rhode Island
 MP: 4.8 Existing Length: 28' (quad) Proposed Length: 40' (single)
 Existing Rail Section: 115RE Proposed Rail Section: 115RE
 Existing Surface: 3-rail, unconsolidated, asphalt New Surface: Timber and Asphalt
 Signals: N/A Insulated Joints Needed: 4 EA
 Signal Conduit: Yes - 2EA Welding Mandatory: Yes Number of welds: 4
 Drainage: Install drain tile per GW Standards, outlet in SE Quadrant.
Grade quadrants to provide positive drainage away from crossing.
 Fouled Ballast: Full ballast replacement under all new ties
 Train Schedule: Monday-Wednesday-Friday. 3 Days/Week
 Detour Needs: No

Other information: **Crossing Reconstruction dependent on adjacent roadway and residential development construction. Scope of work also includes track reconfiguration and turnout reconstruction and shown in Exhibit 2.**

Existing



Northern Region Crossing Information

Purchasing Material: Contractor

"Ship To" Address: 293 Bourne Ave Pawtucket, RI 02916

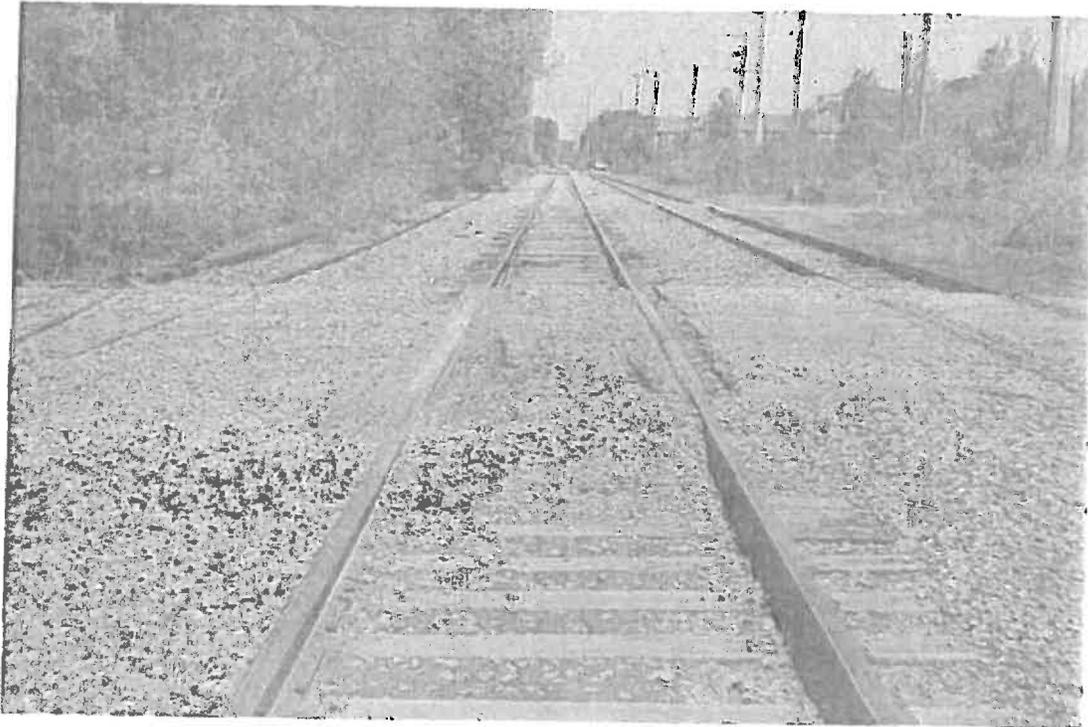
Delivery Method: Truck

Unloading Party: Contractor

Point of Contact (Name and cell): Mr. Tim Kenny – (508) 328-4241

Please add pictures of crossing or send pictures with completed crossing form so it can be inserted here.

Northward View

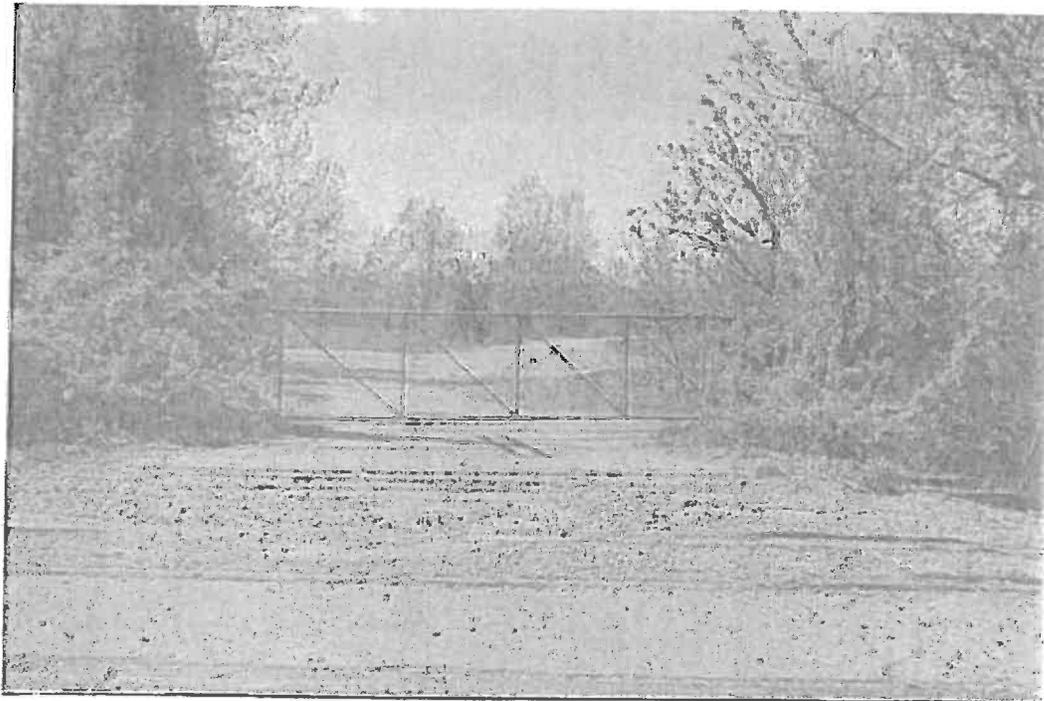


Northern Region Crossing Information

Southward View

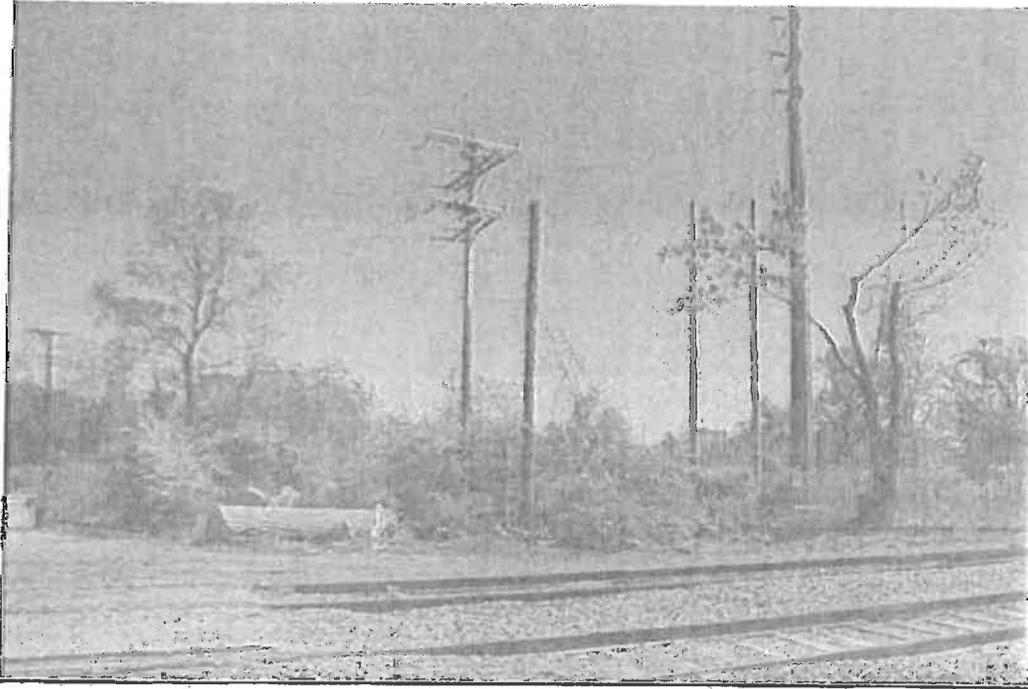


Westward View



Northern Region Crossing Information

Eastward View



Track Condition



BASIS OF DESIGN



Region:	NORTHERN
Railroad:	PROVIDENCE AND WORCESTER RAILROAD
Subdivision:	MAIN LINE
Supervisor:	ROBERT BALLOU
Railroad No.:	21PWRZDIR

Location Name:	EAST POINTE RD.
City, (County), ST:	EAST PROVIDENCE, (PROVIDENCE), RI
MP:	4.84
DOT#:	861537N
Prepared By:	TODD SWANN
Date Prepared:	6/17/2021

Warning Time Calculation

Notes to User:

- 1) If any standard values are changed, please provide justification
- 2) Clearance maximum measured distance along highway from crossing stop line, warning device or 12 feet perpendicular (whichever is furthest) to 6 feet beyond far rail. (Railroad-Highway Grade Crossing Handbook - Revised Second Edition 2007)

Clearance Time Calculation	
Clearance Distance	30 ft
Clearance time	0 ft

Approach Length Calculation		
Base Warning Time	20 sec	
Plus Clearance Time	0 sec	(Linked to calc above)
Equals Planned Warning Time	20 sec	
Plus Time for Traffic Preemption	0 sec	
Equals Total Design Warning Time	20 sec	
Plus Equipment Response Time	5 sec	
Plus Buffer Time	0 sec	(Provide explanation)
Plus Additional Time	0 sec	
Equals Total Warning Time	25 sec	
Times Maximum Design Train Speed	30 mph	
Times Ratio of fps to mph	1.470 fps/mph	
Equals Approach Circuit Length	525 ft	(Rounded up to nearest foot)

Exhibit B

COPY

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

GEONOVA DEVELOPMENT CO., INC. :

VS. :

C.A. NO. PB 09-5341

THE CITY OF EAST PROVIDENCE :

ORDER APPOINTING SPECIAL MASTER

Plaintiff, Geonova Development Co., Inc. ("GeoNova") and Defendant, The City of East Providence ("East Providence") hereby consent to the entry of an Order appointing a Special Master with regard to the former Ocean State Steel Property at East Pointe (the "Subject Property") for the specific purpose of implementing, supervising and bringing to conclusion a Confidential Settlement Agreement entered into by and between Geonova and East Providence.

Upon consideration by the Court and pursuant to the parties' consent, it is hereby

ORDERED, ADJUDGED and DECREED:

1. W. Mark Russo, Esq., of Ferrucci Russo P.C., 55 Pine Street, Providence, Rhode Island shall be and is hereby appointed Special Master (the "Special Master") of the Subject Property for the purpose of implementing, supervising and bringing to conclusion a Confidential Settlement Agreement by and between the parties.

2. The Subject Property is defined in Exhibit A to the East Pointe Property Development and Finance Agreement dated September 26, 2003, and shall include all rights and entitlements relative to the Subject Property, including all permits, approvals, licenses and all such other related entitlements secured pursuant to the development of the Subject Property as outlined in the underlying pleadings (the "Permits and Approvals"). Moreover, all such Permits and Approvals shall be tolled during the term of the Special Mastership.

3. The Special Master is authorized to take possession and charge of the Subject Property, including any and all Permits and Approvals, books and/or records relative to the Subject Property and to preserve the same until further order of this Court.

4. The Special Master shall maintain possession of the Confidential Settlement Agreement executed by the parties. The Confidential Settlement Agreement shall remain with the Special Master and remain confidential pending complete performance and the termination of the Special Master's appointment.

5. The said Special Master shall, no later than five (5) days from the date hereof, file a bond in the sum of \$10,000.00 with any surety company authorized to do business in the State of Rhode Island as surety thereon, conditioned that the Special Master will well and truly perform the duties of said office and duly hold, in trust for the benefit of the parties to this action, and others as may be directed by the Court, all monies and property which may come into the Special Master's hands and account for all such monies and property and abide by and perform all things which the Special Master will be directed to do by this Court.

6. The Special Master is granted and shall have all powers and authorities necessary to commence, supervise and bring the terms and conditions of the Confidentiality Settlement Agreement to conclusion, including authority to incur expenses in the Mastership's discretion, as may be desirable or necessary to complete the undertakings set forth herein.

7. That the Special Master shall continue to discharge said Special Master's duties and trusts hereunder until further order of this Court; that the right is reserved to the Special Master and to the parties hereto to apply to this Court for any other or further instructions to said Special Master and that this Court reserves the right, upon such Notice, if any, as it shall deem

proper, to make such further orders herein as may be proper, and to modify this Order from time to time.

8. Pursuant to this Court's equitable authority, this Court finds that the designation of the afore-described person for appointment as Special Master herein is warranted and required because of the Special Master's specialized expertise and experience in in administrating non-routine, Special Masterships which involve unusual or complex legal, financial, or business issues.

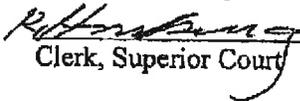
9. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against the Subject Property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, stockholder, corporation, partnership or any other person, or the levy of any attachment, execution of other process upon or against the Subject Property, or the taking or attempting to take into possession the Subject Property, or the cancellation at any time during the Special Mastership proceeding herein of any insurance policy, lease or other contract with regard to the Subject Property, by any of such parties as aforesaid, other than the Special Master designated as aforesaid, or the termination of telephone, electric, gas or other utility service to the Subject Property, by any public utility, without prior approval thereof from this Honorable Court, in which connection said Special Master shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court. This paragraph shall not apply to prosecution of this action by the parties to this action. This order is without prejudice to and with reservation of all

rights of the parties to take discovery, make motions, and to otherwise prosecute the claims and defenses in this action.

10. The Special Master shall give notice of this Order by mailing, on or before September 18th, 2014, a copy of said Order appointing Special Master to each person or entity who has a lien, claim or encumbrance on the Subject Property whose address is known or may become known to the Special Master.

BY ORDER:

ENTER:

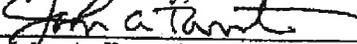

Clerk, Superior Court


Judge Michael A. Silverstein
8/19/2014

Submitted by:

Geonova Development Co., Inc.

By its Attorney,



John A. Tarantino (#2586)

Adler Pollock & Sheehan P.C.

One Citizens Plaza, 8th fl.

Providence, RI 02903

Tel.: (401) 274-7200

E-mail: jtarantino@apslaw.com

Dated: ^{August} ~~May~~ 18, 2014

The City of East Providence

By its Attorney,



Robert C. Corrente (#2632)

Burns & Levinson

One Citizens Plaza, Suite 1100

Providence, RI 02903

Tel.: (401) 831-8330

E-mail: rcorrente@burnslev.com

Exhibit C

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

GEONOVA DEVELOPMENT CO., INC. :

VS. :

THE CITY OF EAST PROVIDENCE :

C.A. NO. PB 09-5341

**ORDER GRANTING SPECIAL MASTER'S PETITION TO
SELL REAL ESTATE FREE AND CLEAR OF LIENS**

The above-entitled Special Mastership proceeding having come before this Court on the 28th day of July, 2020, for a hearing on the Special Master's Petition to Sell Real Estate Free and Clear of Liens, it is hereby:

ORDERED, ADJUDGED and DECREED

1. The Special Master's request to allow further competitive bidding is denied. The Court notes that Stakeholder, City of East Providence objected to further competitive bidding and Stakeholder, GeoNova Development Co., Inc. did not have sufficient time to review and analyze the proposed competitive bid and its potential effects on the Stakeholders and/or the approval process, so it did not object to or support further competitive bidding.

2. That due and timely notice of said Petition has been given to all parties known to the Special Master with interest in the real estate, more commonly known, and identified as City of East Providence Tax Assessor's Map as Map 303, Block 13, Parcels 4 and 5 and Map 203, Block 1, Lot 4 (the "Premises") and further defined in the Purchase and Sale Agreement attached hereto as Exhibit A.

3. The Special Master is hereby authorized to sell all of his right, title, and interest in the Premises described in Exhibit A attached hereto, free and clear of all interests, claims, liens and encumbrances of any kind, nature or type whatsoever to Noble Development, LLC, or its

nominee ("Buyer"), upon the terms and conditions set forth in the Real Estate Purchase and Sale Agreement (the "Agreement") attached hereto as Exhibit A and hereby incorporated herein and all interests, claims, liens and encumbrances against the Premises are hereby transferred to the proceeds, thereof in the same priority as prior to such transfer.

4. That based upon the advertising and marketing of the Premises and the bid process conducted by the Special Master as represented by the Special Master, this Court finds that the sale of the Premises to Buyer, upon the terms and conditions of the Agreement attached hereto, is commercially reasonable, the sales prices and the terms set forth therein are fair and reasonable, the sale is made in good faith and the Buyer is a bona fide good faith Buyer, and that such sale is in the best interest of all creditors of the Special Mastership wherever located. In addition, the Court noted on the record that the sale is with the consent of the Stakeholders.

5. That the Special Master and the Buyer have agreed that this Court shall retain jurisdiction over the sale of the Premises to Buyer pursuant to the Agreement attached hereto, and this Court shall have sole and exclusive jurisdiction over any issues or disputes regarding the sale of the Premises and the Agreement, including but not limited to, such jurisdiction to (i) adjudicate any and all issues arising from or relating to said Agreement, (ii) the interpretation of any provisions of said Agreement, (iii) the enforcement of any provision of said Agreement and any provision of this Order; and (iv) the utilization of the Premises by the Special Master to generate rental income from third parties and contracts related thereto pending fulfillment and implementation of the Agreement.

6. That the Special Master is hereby authorized to execute and deliver a Special Master's Deed conveying all of his right, title and interest as the Special Master in and to the

Premises, free and clear of all interests, claims, liens and encumbrances, including but not limited to, all statutory and other claims.

7. That all parties who claim an interest, lien or encumbrance against the Premises are hereby directed to execute and deliver to the Special Master, within seven (7) days of his request, appropriate lien releases, mortgage discharge(s) and/or UCC Financing Termination Statements. Failure to receive lien releases, mortgage discharge(s), UCC Financing Termination Statements and any and all liens or encumbrance shall not impair the free and clear nature of the title authorized to be conveyed hereby. Moreover, to the extent that any party fails to provide the Special Master with any requested lien release, mortgage discharge and/or UCC Termination Statement within seven (7) days of the Special Master's request then, the Special Master is hereby authorized and directed to execute and record said lien release, mortgage discharge, and/or UCC Termination Statement.

August
Enter as an Order of this Court this 4th day of ~~July~~, 2020.

BY ORDER:

Brian P. Stern, Jr.
Associate Justice

ENTER:

/s/ Carin Miley
Clerk Deputy Clerk I
August 4, 2020

Submitted by:

/s/ W. Mark Russo
W. Mark Russo, (#3937) In and Only In His
Capacity as Special Master for East Pointe
Ferrucci Russo P.C.
55 Pine Street, 4th Floor
Providence, RI 02903
Telephone: (401) 455-1000
E-mail: mrusso@frlawri.com
Dated: July 30, 2020

Certificate of Service

I certify that on the 30th day of July, 2020, the within document was electronically filed and electronically served through the Rhode Island Judiciary Electronic Filing System, on all parties registered to receive electronic service in this matter. The document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/W. Mark Russo

Case Number: PB-2009-5341
Filed in Providence/Bristol County Superior Court
Submitted: 7/30/2020 12:56 PM
Envelope: 2686239
Reviewer: Victoria H

Exhibit A

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

GEONOVA DEVELOPMENT CO., INC. :

VS. :

C.A. NO. PB 09-5341

THE CITY OF EAST PROVIDENCE :

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into by and between W. Mark Russo, Esq., in his capacity as SPECIAL MASTER of the property located at 300 Bourne Avenue, East Providence, Rhode Island, and not individually, with a mailing address for purposes of this Agreement c/o Ferrucci Russo PC, 55 Pine Street, Providence, Rhode Island 02903 (hereinafter referred to as "Special Master") and Noble Development, LLC and/or its nominee with a mailing address for purposes of this Agreement of 10 Greene Street, Providence, Rhode Island 02903 (hereinafter referred to as "Buyer").

WITNESSETH THAT

1. PREMISES:

SPECIAL MASTER AGREES TO SELL AND CONVEY TO BUYER OR BUYER'S NOMINEE, AND BUYER OR BUYER'S NOMINEE AGREES TO PURCHASE, UPON THE TERMS AND CONDITIONS HERINAFTER SET FORTH HEREIN ALL OF SPECIAL MASTER'S RIGHT, TITLE AND INTERESTS AS SAID SPECIAL MASTER OF 300 BOURNE AVENUE, EAST PROVIDENCE, RHODE ISLAND, IN AND TO THOSE CERTAIN PARCELS OF REAL ESTATE WITH IMPROVEMENTS LOCATED AT 300 BOURNE AVENUE, MORE SPECIFICALLY IDENTIFIED AS CITY OF EAST PROVIDENCE ASSESSOR MAP 303, BLOCK 13, PARCELS 4 AND 5 AND MAP 203, BLOCK 1, LOT 4 WITH ALL ASSETS AND CLAIMS ASSOCIATED THEREWITH, INCLUDING, WITHOUT LIMITATION, ALL OF THE IMPROVEMENTS THEREON AND ALL ASSOCIATED RIGHTS, INCLUDING AS TO RIGHTS OF WAY, OF PASSAGE, EASEMENTS AND SIMILAR RIGHTS AND ENTITLEMENTS IN REGARD TO THE SPECIFIED PARCELS, AND AS SUCH PROPERTY MAY BE MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION ATTACHED HERETO AS **EXHIBIT A** (COLLECTIVELY, THE "PREMISES"), FREE AND CLEAR OF ALL LIENS, MORTGAGES, ENCUMBRANCES, CLAIMS AND INTERESTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE SPECIAL MASTER'S CONVEYANCE OF THE PREMISES DOES NOT INCLUDE ANY EQUIPMENT, INVENTORY OR TANGIBLE ASSETS LOCATED AT THE PREMISES. IN ADDITION, THE SPECIAL MASTER'S CONVEYANCE DOES NOT INCLUDE ANY LEASED EQUIPMENT, MACHINERY, OR OTHER LEASED ASSETS OR ANY ASSETS NOT OWNED BY THE MASTERSHIP, AND THE PROCEEDS OF ANY OF THE FOREGOING (THE "EXCLUDED ASSETS").

2. PHASED DEVELOPMENT

It is the intention of the Special Master and the Buyer that the Buyer shall develop the Premises in four phases ("Phase IA", "Phase IB", "Phase IIA" and "Phase IIB") and will result in a project consisting of not less than 300 units of residential housing (the "Proposed Project").

As defined herein, the "Phase IA Premises" shall be an approximate ten (10) acre portion of that parcel of real estate identified in the City of East Providence as Tax Assessor's Map 203, Block 1, Parcel 4 and bordering the real property known as "Phillipsdale Landing". Tax Assessor's Map 203, Block 1, Parcel 4 is in its entirety defined herein as the "Waterfront Parcel". The Phases are depicted in **Exhibit B**.

In turn, the "Phase IB Premises" shall be defined as the remainder of the Waterfront Parcel that is not defined, herein, as the Phase IA Premises. See **Exhibit B**.

The "Phase IIA Premises" shall be defined as a portion of that real estate more specifically identified in the City of East Providence as Tax Assessor's Map 303, Block 13, Parcels 4 and 5, which are also referenced in this proceeding as the "Omega Pond Parcel" amounting to approximately 4-5 acres. See **Exhibit B**. Finally, Phase IIB shall be the remainder of the Omega Pond Parcel that is not defined herein as the Phase IIA Premises. See **Exhibit B**.

As pursuant to the terms and conditions of this Real Estate Purchase and Sale Agreement, subject to Court approval, the Special Master intends to sell and convey to Buyer or Buyer's nominee and Buyer or Buyer's nominee intends to purchase the Premises, upon the terms and conditions herein set forth.

The intended sequence for the residential development of the Premises is as follows:

- A. Phase IA – A minimum of 75 residential units;
- B. Phase IB – A minimum of 75 residential units;
- C. Phase IIA – A minimum of 75 residential units; and
- D. Phase IIB – A minimum of 75 residential units.

Notwithstanding, the Buyer shall secure permits and approvals for the entire development within the Permitting Period (see Section 21) and shall undertake all commercially reasonable efforts to expedite said permits and approvals.

3. PURCHASE PRICE FOR THE PREMISES

The agreed total purchase price for the Premises is Four Million and 00/100 Dollars (\$4,000,000.00) (the "Purchase Price") paid in full in cash in two (2) phased installments less the deposit as follows:

A. \$100,000.00 (the "Deposit") payable as follows:

Upon the mutual execution of a Purchase and Sale Agreement, Buyer will make a good faith deposit of Five Thousand and 00/100 Dollars (\$5,000.00). The Buyer shall execute and present to the Special Master. The Special Master shall execute subject to Court approval.

Upon the Special Master's noticing of a hearing date for the Court's approval of this Agreement, Buyer will deposit an additional Twenty Thousand and 00/100 Dollars (\$20,000.00). Said additional deposit must be deposited no later than five (5) days before the hearing on a Motion to Approve the Sale.

Then, in the event that this Agreement is approved by the Court after a Petition to Approve the Sale, Buyer will deposit an additional Twenty-five Thousand and 00/100 Dollars (\$25,000.00) on the day that the Court approves the Agreement at the hearing on the Petition to Approve the Sale. Thus, Buyer shall have deposited a total refundable deposit of Fifty Thousand and 00/100 Dollars (\$50,000.00) prior to the Due Diligence Period (as defined below).

At the end of the Due Diligence Period (as defined below), if Buyer elects to move forward, Buyer will deposit an additional refundable Fifty Thousand and 00/100 Dollars (\$50,000.00)

All deposits are to be held in escrow, in an interest bearing account, by Chicago Title Insurance Co., 1 State Street, Suite 600, Providence RI 02908. During the Due Diligence Period and Permitting Period, Buyer may at any time and at its sole discretion unilaterally cancel the Purchase and Sales Agreement and receive an immediate full refund of the deposits and accrued interest.

- B. \$2,250,000.00 at the Closing.
- C. \$1,750,000.00 not later than twelve (12) months from the Closing. The Deposit shall be applied toward this second phase of the funding and payment of the Purchase Price.
- D. Notwithstanding subparagraph (C) above, Buyer at its sole discretion can elect to extend the second phase of the funding and payment of the Purchase Price by six (6) months in consideration for paying an additional \$100,000.00 at the second phase of the Closing, which will increase the total Purchase Price to \$4,100,000.00. If Noble elects to extend the time for the second phase of the funding, Noble shall advance the additional \$100,000.00 as follows:
- (1) No later than three (3) months after the Closing, Noble shall advance an additional \$50,000.00 to be credited towards the second phase of the funding in payment of the Purchase Price; and
 - (2) Then, no later than six (6) months after the Closing, Noble shall advance an additional \$50,000.00, also to be credited towards the second phase of the

funding and payment of the Purchase Price.

4. SPECIAL MASTERSHIP'S SECURITY FOR PAYMENT OF THE BALANCE OF THE PURCHASE PRICE AFTER THE FIRST PHASE OF THE FUNDING:

- A. The Special Mastership shall be granted a first position mortgage (the "Special Mastership's First Mortgage") on the Phase IIA and Phase IIB parcels otherwise known as the "Omega Pond Parcel". The Special Mastership's Mortgage will not accrue interest. The Special Mastership's Mortgage shall be subordinate to the Access Easement described in Section 5, below, and any construction financing mortgage on such easement and improvements. The subordination of the Special Mastership's Mortgage on the Omega Pond Parcel shall be limited to the easement area and any construction financing necessary to construct roadway or other improvements within said easement area.
- B. The Special Mastership shall be granted a \$750,000 second mortgage on the Phase IA and Phase IB or the "Waterfront Parcel" (the "Special Mastership's Second Mortgage") subject to the Buyer's lender's first mortgage. In the event of a default, the Special Mastership's Second Mortgage shall be paid through a priority interest in a per unit release payment which shall equal an aggregate of \$750,000 divided by the number of units permitted to be developed and constructed under the Phase I and Phase III premises known as the Waterfront Parcel.
- C. If the second phase of the funding and payment of the Purchase Price, in full, takes place within 18 months of the Closing, then the Special Mastership's security shall be released. In the event the Buyer fails to pay the Purchase Price, in full, within 18 months of the Closing, the Special Mastership shall reserve all rights both legal and equitable, including but not limited to a demand that the Buyer relinquish title to Omega Pond Parcel in lieu of the Special Mastership's First Mortgage and that the Buyer perform under the per unit payout.

The Court shall retain jurisdiction over the performance of this Agreement up and until the Second phase of the funding and payment of the Purchase Price is complete.

5. ACCESS EASEMENT:

- A. At the Closing, the Buyer's nominee shall be provided an access easement (the "Access Easement") over the Omega Pond Parcel for the purpose of building a roadway, solely as approved within the Project development plans, for vehicular access to and from the Waterfront Parcel from Roger Williams Avenue.
- B. The Special Mastership, at the Closing, shall be provided a non-exclusive easement for vehicular and pedestrian access from Roger Williams Avenue over any roadway improvement on the Omega Pond Parcel to provide access for the Special Mastership to

the Omega Pond Parcel pending Buyer's full performance under the Agreement.

6. DATE OF THIS AGREEMENT:

The Date of this Agreement shall be the date on which the Special Master signs this Agreement subject to Court approval, as set forth immediately under the Special Master's signature below.

7. TITLE AND COURT APPROVAL:

Conveyance of the Special Master's interest as aforesaid in the Premises shall be made by a Special Master's Deed ("Deed") in customary form, without covenants, warranties or representations of any kind whatsoever, conveying to the Buyer all of the Special Master's right, title and interest as said Special Master in and to the Premises, free and clear of all liens, mortgages, security interests, claims, encumbrances and interests specifically including, but not limited to, any and all statutory liens, judgment liens, claims for municipal real estate or tangible property taxes. This Agreement is expressly made subject to approval of the Providence County Superior Court for the State of Rhode Island (the "Court") in the Special Mastership proceeding pending before that Court as docket number PB 2009-5341, after hearing with notice to all interested parties, authorizing and ordering the sale free and clear of all liens, mortgages, security interests, claims, encumbrances and interests. The conveyance of the Premises shall be subject to all restrictions, easements and conditions of record, and subject to all applicable zoning and other federal, state and municipal laws and regulations.

Buyer acknowledges and understands that the consummation of this Agreement is subject to Court approval and that Special Master will be obligated to submit to the Court for its review and consideration any other offers for the Premises received by the Special Master subsequent to this Agreement for a purchase price higher than or on more advantageous terms than that set forth herein for the Court's review and consideration subject to the conditions for competing offers set forth in Section 21 below.

8. POSSESSION:

Upon conveyance of title to the Premises, full possession of the Premises shall be delivered to the Buyer free of any and all tenants unless otherwise disclosed by Buyer and Special Master.

9. THE CLOSING:

The Closing shall take place within thirty (30) days after all contingencies and conditions have been satisfied with all appeal periods having lapsed, or if any appeal has been taken, with final disposition thereof acceptable to Buyer. Notwithstanding the foregoing, the Closing shall take place within fourteen (14) months from the date the Superior Court approves the sale; provided, however, Buyer may extend the date of Closing for such period of time as it deems reasonably necessary to obtain all necessary permits and approvals and achieve other contingencies to Closing (as set forth in Section 21) as long as Buyer made significant progress in taking steps necessary to apply for and obtain such permits and approvals and achieve such contingencies, and is diligently continuing to seek to obtain such permits and approvals and achieve such contingencies. Notwithstanding, in the event the stakeholders and/or the Special Master take the position that

Buyer is not acting in good faith, has not undertaken diligent efforts and/or has not achieved significant progress, then the Special Master can object and request a hearing before the Court. The Court can then consider any and all remedies, including ordering an increase in the deposit as a condition of extending any timeframes.

It is agreed and understood that **TIME IS OF THE ESSENCE** of this Agreement.

At Closing, Buyer shall provide Special Master with a copy of the Municipal Lien Certificate or other evidence of payment of taxes reasonably satisfactory to Special Master, and the basis for the computation of all adjustments and other entries on the Settlement Statement. At the Closing the Buyer's net proceeds check shall be delivered to the Special Master and held in escrow pending recording of the Deed, at which time such funds shall be released from escrow. Buyer agrees to record the Deed in the appropriate recording office forthwith after delivery of same. This provision shall be deemed to survive the Closing. Buyer shall notify Special Master forthwith of the recording of the Deed.

10. ADJUSTMENTS:

Rents, fuels, water charges, and sewer use charges, if any, shall be apportioned as of the date of delivery of the Deed as estimated on the basis of the best information available at the time, and the net amounts thereof shall be added to or deducted from the Purchase Price, as the case may be.

Any assessments constituting a lien on the Premises which are payable over a period of more than one (1) year shall be apportioned in such manner that Special Master shall pay installments due during the appropriate calendar or municipal fiscal years prior to the year said Deed is delivered, the installment due in that year shall be apportioned in the same manner as provided for taxes, and the Buyer shall pay or assume the balance of such assessment. Buyer hereby agrees to assume and pay when due all taxes and assessments which are allowed as a credit against the Purchase Price. Buyer shall be responsible for payment of all documentary transfer stamps and statutory recordings, fees and costs.

Real Estate taxes, tangible property taxes, and fire district taxes assessed upon the Premises as of December 31 of the year immediately preceding the year in which the delivery of the Deed occurs, applicable to the following year, shall be apportioned, in accordance with the manner such taxes are customarily prorated in the municipality where the Premises is located, in such a manner that Special Master shall pay, or, at Special Master's election, allow to Buyer as a credit against the Purchase Price, that portion thereof which corresponds to the portion of said year which has expired on the date of delivery of the Deed, and Buyer shall pay or assume the balance. Special Master shall pay or, at Special Master's election, allow to Buyer as a credit against the Purchase Price, all other taxes which are a lien upon the Premises. In the event that at the time of delivery of said Deed the amount of such taxes shall not be definitely fixed and ascertainable, it shall, for the purposes of making such apportionment, be conclusively assumed that the amount of such taxes will be identical with those of the next prior assessment.

The Special Master shall be entitled, at the Special Master's discretion, to use any portion or all of the Purchase Price to pay any of the foregoing or any other liens or encumbrances against the

Premises. In the event that a portion or all of the Purchase Price is used to pay any of the foregoing, a title company identified in Section 3, which will act as the "Settlement Agent" shall provide copies of receipts or other evidence of payment satisfactory to the Special Master within forty-eight (48) hours of the recording of the Deed.

11. EXTENSION OF CLOSING:

If the Special Master shall be unable to give title to Buyer, or to make conveyance, or to deliver possession of the Premises, all as in accordance with this Agreement, or if at the time of the Closing, the Premises does not conform with the provisions of this Agreement, then the Special Master, shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, in which event the Closing hereunder shall be extended by thirty (30) days. It is understood and agreed that Special Master shall not be under any obligation to attempt to cure by litigation or otherwise any defect which may be found to exist in the title to the Premises or to remove any encumbrances upon the title to the Premises not voluntarily placed thereon by the Special Master subsequent to the date hereof or to correct any violations of subdivision, plat, zoning, building, minimum housing standard regulations or other similar restrictions or regulations. This paragraph is also not intended to apply to any damage to the Premises caused by fire or other casualty, as to which the provision of a Paragraph hereof entitled "13. INSURANCE:" shall apply. The Buyer may, however, with the Special Master's consent, elect to waive any such defects and accept such title to the Premises as the Special Master is able to convey, without any warranty as to such conditions and without a reduction of the Purchase Price, and an acceptance of the Deed by the Buyer shall be deemed full performance and discharge of all the obligations of the Special Master under this Agreement.

12. SPECIAL MASTER'S TENDER OF DEED

Except as otherwise set forth herein, the tender of the Deed by the Special Master and acceptance by Buyer shall be deemed full performance and discharge of every agreement and obligation of the Special Master contained or expressed in this Agreement.

13. INSURANCE:

Until delivery of the Deed to Buyer, the buildings on the Premises shall be insured by Special Master against loss by fire under the same policy as exists at present, and in case of any loss or other casualty in an amount less than Twenty-Five Thousand (\$25,000.00) Dollars occurring between the date of this Agreement and the delivery of the Deed, Buyer shall remain bound to purchase the Premises and Special Master agrees to pay over or assign to Buyer upon payment of the remainder of the Purchase Price all sums recovered or recoverable on account of said insurance, plus the deductible amount, if any, unless the Special Master shall have restored the premises to their former condition in which event the proceeds shall be retained by Special Master.

In the event of any loss or casualty occurring after Court approval of this Agreement and prior to delivery of the Deed in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars, the

Special Master shall have the option of, but shall have no obligation of (a) restoring the Premises to the same condition in which they were on the date of this Agreement, reasonable wear and tear excepted; or (b) reducing the Purchase Price by the amount of such damage, as said amount may be agreed to by the parties; or (c) failing such agreement, seek a determination from the Court as to the treatment of such loss or casualty.

To the extent the Special Master has liability insurance in place, it shall remain in place up to the Closing. The Buyer shall also maintain liability insurance with the following coverages naming the Special Mastership as an additional insured from the commencement of Due Diligence up and through full payment of the Purchase Price: See Buyer's Liability Insurance Exhibit attached hereto.

14. DEFAULT:

If the Buyer shall default in the performance of Buyer's obligations hereunder, the Special Master shall have the right to retain the deposit and resell the Premises without notice to the Buyer, or require specific performance without prejudice to any of Special Master's other rights or remedies at law and in equity.

15. BROKERS AND AGENTS:

Buyer and Seller agree to indemnify the other party against, and to hold the other party harmless from any and all cost, expense or liability based upon or related to a claim for a brokerage commission or finder's fees in connection with the transaction contemplated hereby to the extent such liability shall be based upon arrangements or agreements made or claimed by third parties to have been made by or on behalf of the Buyer or the Seller, as the case may be, and not disclosed in this Agreement.

16. NOTICES:

All notices as required in this Agreement must be in writing. All notices shall be by certified mail or by personal delivery. Notice by certified mail will be effective upon sending. Notice by personal delivery will be effective upon delivery to the other party. Notices to the Special Master and the Buyer must be addressed to the addresses that appear in the first paragraph of this Agreement.

17. BUYER REQUIRED TO COMPLY WITH ZONING:

Buyer is obligated to comply with any and all state and local real estate ordinances, statutes and/or regulations, commercial or otherwise.

18. RADON GAS:

Radon gas has been determined to exist in the State of Rhode Island. The Buyer acknowledges that the Special Master has no obligation whatsoever to perform any tests for radon, and that such

testing, if any, shall be solely at Buyer's expense. The Special Master makes no representation whatsoever concerning the existence or absence of radon in the Premises. The discovery of radon shall in no way relieve the Buyer from its performance and/or obligations under this Agreement.

19. LEAD POISONING DISCLOSURE:

The Buyer acknowledges that the Special Master shall have no obligation whatsoever to perform any risk assessments or inspections for lead-based paint hazards within the Premises. Any such inspections or risk assessments shall be done solely at the Buyer's election and expense. Buyer acknowledges that Buyer has been advised that Special Master has no reports or information concerning lead-based hazards within the Premises, and that Special Master makes no representations concerning the existence or absence of lead-based paint within the Premises. The discovery of any lead-based paint hazards shall in no way relieve the Buyer from its performance and/or obligations under this Agreement.

20. NO ENVIRONMENTAL CONDITION:

Buyer acknowledges that Buyer may conduct any environmental site assessments or studies of any kind, which Buyer deems advisable and/or necessary, at Buyer's sole expense, subject to Special Master's approval. However, Buyer expressly acknowledges and agrees that the conveyance contemplated hereunder is not conditioned in any way whatsoever upon the Special Master's conducting or performing any cleanup or remedial action of any kind or nature on the Premises.

21. CLOSING/CONVEYANCE SUBJECT TO CONTINGENCIES:

Buyer expressly acknowledges and agrees that neither the closing nor the conveyance contemplated hereunder are conditioned in any way whatsoever upon the Buyer or the Special Master complying with any contingencies, including, but not limited to Buyer financing, structural or environmental inspections, zoning, licensing and/or any other contingency of any kind or nature relative to the Premises, except for the contingencies specifically set forth in this Section 20.

The contingencies to closing on the Phase IA Premises are as follows:

1. Master Plan approval from the East Providence Waterfront Commission of the Project Plan, as defined below, of not less than 400 residential units, and subject to Buyer's satisfaction with any conditions in the approval of the Project Plan.
2. An approved subdivision plan for the Project Plan as acceptable to Buyer.
3. Approval from the East Providence City Council for a Tax Incremental Financing plan acceptable to the Buyer.
4. An amendment to the existing Rhode Island Coastal Resources Management Council ("CRMC") Assent as consistent with the Project Plan.

5. The consent of Genesee and Wyoming Railroad, Rhode Island Department of Transportation and/or a Court order restoring the ability to establish a surface rail crossing that allows access to the Waterfront Parcel from Roger Williams Avenue with such means and methods as are acceptable to Buyer in its sole discretion.
6. Any required approval from Rhode Island Department of Environmental Management ("RIDEM") for site development pursuant to the Project Plan, as hereafter defined.
7. Approval from the City of East Providence Department of Public Works for utility extensions to Buyer's satisfaction.
8. Approval from the Rhode Island Commerce Corporation for Rebuild Rhode Island Tax Credits for the Phase IA Premises development in an amount acceptable to Buyer and a waiver of sales tax on any Project materials.
9. Legislative/governmental restrictions noted pursuant to Section 24 shall have been deemed acceptable to the Buyer.

The Buyer shall be responsible for all costs and expenses incurred in pursuing and satisfying the contingencies in this Agreement, but for the cost and expenses being incurred in securing permission and/or approval for a railroad crossing that will allow access to the Waterfront Parcel from Roger Williams Avenue. The Buyer may participate in the steps necessary to secure the railroad crossing at the Buyer's cost and expense.

In the event the contingencies are not met, the permits and approvals applied for and/or secured, including all engineering, plans, documents etc., shall become property of the Special Mastership.

Furthermore, there shall be a due diligence period as follows:

1. The Buyer shall have a sixty (60) day due diligence period ("Due Diligence Period") to review all aspects of the Premises commencing upon Court approval. During Due Diligence Period, Buyer will develop and provide to the Special Master the "Project Plan" which is defined as a master plan level plan developed by the Buyer demonstrating the plan for all phases and the necessary amendments and/or changes to the existing CRMC Assent. Thereafter, the Buyer in conjunction with the Special Master shall have an additional nine (9) months (the "Permitting Period") to satisfy the Contingencies, above-listed, in accord with the Project Plan. It is anticipated that the Mastership will assist to expedite the approval process where prudent. Seller will deliver to Buyer all plans, reports, regulatory notices and surveys, including all reports regarding environmental conditions and/or actions and determinations by the Rhode Island Department of Environmental Management regarding same. The Mastership will cooperate to provide additional materials/data reasonably requested by Buyer. All documents should be given simultaneously with the delivery of a signed Purchase and Sale Agreement.
2. During the Due Diligence Period and Permitting Period, Seller will provide access to Buyer and Buyer's agents to inspect the premises including, but not limited to, inspections relating to environmental hazards, wetland determination, boundary survey and geotechnical analysis. The Buyer may terminate its obligations to purchase the Property for any reason

at Buyer's sole discretion during the indicated Due Diligence and Permitting Periods by written notice.

22. TERMS AND CONDITIONS FOR COMPETITIVE OFFERS

This Agreement is subject and conditioned upon the Special Master securing Court approval; however, the following terms shall apply to the potential consideration of competitive offers:

- a. For a competitive offer to be determined to be a higher and better offer, the Purchase Price shall be at least \$150,000.00 higher than the offer set forth herein; and
- b. In the event that Buyer is not determined to be the higher and better offeror, then a breakup fee equal to \$50,000.00 shall be paid to the Buyer at the closing on the sale of any portion of the Premises to that offeror determined by the Court to have submitted a higher and better offer than that set forth herein.

23. WETLANDS DISCLOSURE:

All or part of the Premises may have been previously determined by the Rhode Island Department of Environmental Protection to be a wetland, bank, bog, salt marsh, swamp, meadow, or flat as these terms are defined in Chapter 1, Section 20 of Title 2 of the Rhode Island General Laws. The parties hereto acknowledge that it shall be Buyer's sole responsibility to conduct any independent examination to determine whether the Premises are in an area determined to be a Wetlands pursuant to such statutory provisions.

24. RESTRICTIONS OR LEGISLATIVE/GOVERNMENTAL ACTION:

Buyer is responsible for investigating whether there are any restrictions or legislative/governmental actions, present or proposed, which affect or would affect the use of the Premises and Buyer acknowledges that it has not relied on any advice or any representations by Special Master, his employees, attorneys, consultants, agents, or any other representatives of Special Master in this transaction with regard to same.

25. NO WARRANTIES AND REPRESENTATIONS AND NO RELIANCE ON OTHERS:

Buyer has entered into this Agreement based on Buyer's independent review and investigation of the Premises and not on any representation made by the Special Master or any of Special Master's agents or representatives. THIS MEANS THAT THE PREMISES IS BEING SOLD "AS IS", "WHERE IS", AND "WITH ALL FAULTS".

Buyer specifically acknowledges that the property shall be sold to Buyer "as is", "where is", and "with all faults" and that no warranties or representations or covenants of any kind, expressed or implied, have been or will be made by Special Master or any other party with respect to the physical, operating or any other condition of the Premises, or repair of the Premises, or utilities or

sewer systems servicing the same or the use or operation to which the Premises may be put by Buyer, or the applicability of or compliance with applicable federal, state, county, city or other public authorities having or claiming jurisdiction over the Premises or any laws, statutes, codes, ordinances or regulations of any government authority, including without limitation, zoning, land use, building and fire safety, and environmental laws, including, without limitation, all laws, ordinances and regulations concerning hazardous waste and toxic substances, odors, noise, air emissions, discharge of water, chemicals and/or air pollution, or otherwise.

Buyer acknowledges that there have been no representations or warranties as to quality, quantity, durability, condition, merchantability, fitness for any particular purpose, or any other aspects of the Premises. Buyer acknowledges that it has not been influenced to enter into this transaction by the Special Master or his attorney, or their employees, agents, consultants or representatives, and that Buyer has not received nor relied upon any statements or representations made by the Special Master or his attorney, or their employees, agents, consultants or representatives.

Special Master specifically disclaims all warranties imposed by statute or otherwise and makes no warranty of habitability, merchantability or fitness of the Premises for a particular purpose. The terms and provisions of this section shall survive the Closing.

26. AMENDMENTS:

This Agreement may not be amended or modified except pursuant to a written instrument executed by both Buyer and Special Master.

27. CONSTRUCTION OF AGREEMENT:

This Agreement may be executed in one or more counterparts and each shall be deemed to be an original, and shall be binding upon and inure to the benefit of the respective heirs, executors and/or administrators, successors, and/or assigns, of the respective parties hereto, subject to the express conditions stated herein. This Agreement and the interpretation hereof shall be governed by the laws of the State of Rhode Island and the parties expressly agree that the Court shall have jurisdiction to resolve any and all disputes arising under this Agreement, to interpret any terms hereof, and to enforce any and all provisions of this Agreement.

28. ENTIRE AGREEMENT:

The parties hereto, each declare that this Agreement and any other agreements entered into in connection herewith contain the entire agreement between the parties, and that it is subject to no understandings, conditions or representations other than those expressly stated herein or therein. All understandings and agreements heretofore had between the parties, if any, are extinguished and are of no force and effect whatsoever except as the same may be expressly set forth in this Agreement or any other agreement entered into between the Parties in connection herewith, and there has been no reliance by the Buyer upon any statements or representations not made in this Agreement.

29. PROHIBITION AGAINST RECORDING:

This Agreement may not be recorded in the Records of Land Evidence of the municipality in which the Premises is located. IN THE EVENT OF ANY RECORDING OF THIS AGREEMENT, AT THE OPTION OF THE SPECIAL MASTER, THE BUYER WILL CONCLUSIVELY BE DEEMED IN DEFAULT HEREUNDER ENTITLING THE SPECIAL MASTER TO EXERCISE ALL RIGHTS AND REMEDIES HEREUNDER FOR BUYER'S DEFAULT. In addition, any third party may conclusively rely upon an affidavit executed and recorded by the Special Master in said Land Evidence records stating the Special Master has elected to hold the Buyer in default, as conclusively establishing that the Buyer has no further right, title, or interest under this agreement or to the Premises, all of which will be deemed released and conveyed to Special Master.

30. NO PERSONAL LIABILITY:

Notwithstanding anything herein to the contrary, the Special Master's execution of this Agreement is solely in his capacity as Special Master and shall not render the Special Master personally liable in any way whatsoever.

31. FORCE MAJEURE

The failure or delay of either Party to perform any obligation under this Agreement solely by reason of being prevented from performing as a result of government shutdown or suspension of governmental activities due to COVID-19 pandemic shall not be a breach of this Agreement; provided, however, that the parties so prevented from performing shall continue to take all action within its power to comply herewith. The party suffering such *force majeure* shall notify the other parties as soon as possible as to the occurrence of such *force majeure* event and shall set forth the expected duration of being prevented from complying with any of the obligations hereunder and shall in every instance to the extent it is capable of doing so, use commercially reasonable efforts to remove or remedy such cause with all reasonable dispatch. The deadlines set forth herein shall be extended by an amount of time equal to the period in which a party was prevented from performing solely as a result of such a force majeure event.

[Remainder of page intentionally left blank; signature page to follow.]

WITNESS the signatures of the above parties on the date set forth below.

BUYER: Noble Development, LLC

SPECIAL MASTER:

By: _____
Richard Baccari, II

By: _____
W. Mark Russo, Esq., as and
only as the Special Master
of 300 Bourne Avenue, East
Providence, Rhode Island, and
not individually

Date

Date

Witness to Above Signature

Witness to Above Signature

Case Number: PB-2009-6341
Filed In Providence/Bristol County Superior Court
Submitted: 7/30/2020 12:56 PM
Envelope: 2686239
Reviewer: Victoria H

Exhibit A

Map 303 Block 13 Lots 4 & 5
Roger Williams Ave. & Bourne Ave.
East Providence, Rhode Island

That certain tract or parcel of land situated of westerly of Roger Williams Avenue, southerly of Bourne Avenue and northerly of Omega Pond in the City of East Providence, Providence County and State of Rhode Island and Providence Plantations designated as Map 303 Block 13 Lots 4 & 5 on a plan entitled "Boundary Survey Plan Map 203 Block 1 Lot 4 Map 303 Block 13 Lot 4 & 5 Roger Williams Ave. & Bourne Ave. East Providence, RI P02,104 Scale: 1"=80' Data: Sept. 23, 2002 Revised: 3/6/03 Prepared For: GeoNova Development Company 1114 Avenue of the Americas New York, New York 10036." Said parcel is more particularly bounded and described as follows;

Beginning at the intersection of the westerly street line of Roger Williams Avenue with the southerly street line of Bourne Avenue, said point being the northeasterly corner of the parcel herein-described;

thence proceeding S 10°08'47" W, by and with the said westerly street line of Roger Williams Avenue, a distance of two hundred thirty four and 95/100 (234.95') feet to a point of curvature;

thence proceeding southerly and southeasterly by and with the said westerly street line of Roger Williams Avenue, along an arc of a curve, tangent to the previous course, deflecting to the left having a central angle of 27°24'30" and a radius of 380.12', an arc distance of one hundred seventy two and 27/100 (172.27') feet to a point of compound curvature;

thence continuing southeasterly by and with the said westerly street line of Roger Williams Avenue, along an arc of a curve, tangent to the previous course, deflecting to the left having a central angle of 6°41'27" and a radius of 1225.11', an arc distance of one hundred forty three and 41/100 (143.41') feet to land now or formerly of The Grace Chapel Assembly of God;

thence proceeding S 66°02'51" W, a distance of thirty three and 00/100 (33.00') feet to a corner;

thence proceeding S 03°18'38" W, a distance of one hundred eighty two and 84/100 (182.84') feet to land now or formerly of Ortiz Rita Rose, John Horton and Paula A. Horton. The last two herein-described courses are bounded by the said Grace Chapel Assembly of God land;

thence proceeding S 64°20'01" W, a distance of forty three (43'±) feet, more or less to the shore of Omega Pond;

thence proceeding northerly, westerly, southerly and southwesterly along the shore of said Omega Pond, a distance of one thousand one hundred fifty (1,150'±) feet, more or less to land now or formerly of the State of Rhode Island (East Bay Railroad line) and the southwesterly corner of the parcel herein-described;

thence proceeding N 00°25'16" W, a distance of one hundred eighty eight (188'±) feet, more or less to a point of curvature;

Map 503 Block 13 Lots 4 & 5
Roger Williams Ave. & Bourne Ave.
East Providence, Rhode Island

thence proceeding northerly, along an arc of a curve, tangent to the previous course, deflecting to the right having a central angle of $13^{\circ}08'55''$ and a radius of 1001.23'; an arc distance of two hundred twenty nine and $77/100$ (229.77) feet to a point of tangency.

thence proceeding N $12^{\circ}43'39''$ E, a distance of nine hundred fifty four and $06/100$ (954.06) feet to the said southerly street line of Bourne Avenue and the northwesterly corner of the parcel herein-described. The last three herein-described courses are bounded westerly by the said State of Rhode Island land;

thence proceeding S $75^{\circ}47'48''$ E, by and with the said southerly street line of Bourne Avenue, a distance of three hundred seventy one and $58/100$ (371.58) feet to the said westerly street line of Roger Williams Avenue and the point and place of beginning;

The above-described parcel contains 372,600 square feet (8.554 Acres) more or less of land, and may be subject to and benefited by easements and rights of way of record.

Map 203 Block 1 Lot 4
Roger Williams Ave. & Bourne Ave.
East Providence, Rhode Island

That certain tract or parcel of land situated of westerly of Roger Williams Avenue, southerly of Bourne Avenue and northerly of Omega Pond in the City of East Providence, Providence County and State of Rhode Island and Providence Plantations designated as Map 203 Block 1 Lots 4 on a plan entitled "Boundary Survey Plan Map 203 Block 1 Lot 4 Map 303 Block 13 Lot 4 & 5 Roger Williams Ave. & Bourne Ave. East Providence, RI PD2.104 Scale: 1"=80' Date: Sept. 23, 2002 Revised: 3/8/03 Prepared For: GeoNova Development Company 1114 Avenue of the Americas New York, New York 10036." Said parcel is more particularly bounded and described as follows;

Beginning at a point in the westerly line of land now or formerly of the State of Rhode Island (the East Bay Railroad line) at the southeasterly corner of land now or formerly of Phillipsdale Landing Partners, L.P. and the northeasterly corner of the parcel herein-described;

thence proceeding S 12°43'39" W, a distance of three hundred forty five and 05/100 (345.05') feet to a point of curvature;

thence proceeding southerly, along an arc of a curve, tangent to the previous course, deflecting to the left having a central angle of 13°08'55" and a radius of 1081.23', an arc distance of two hundred forty eight and 13/100 (248.13') feet to a point of tangency;

thence proceeding S 00°25'16" E, tangent to the previous course, a distance of two hundred (200') feet, more or less to the mean high water line of the Seekonk River. The last three herein-described courses are bounded easterly by the said State of Rhode Island land;

thence proceeding westerly, northwesterly and northerly along the said mean high water line of the Seekonk River, a distance of one thousand nine hundred fifty six (1,956') feet, more or less to the said Phillipsdale Landing Partners, L.P. land and the northwesterly corner of the parcel herein-described;

thence proceeding S 76°18'55" E, a distance of eighty six (86') feet, more or less to a corner;

thence proceeding N 12°41'45" E, a distance of fifty one and 00/100 (51.00') feet to a corner;

thence proceeding S 76°15'55" E, a distance of eighty and 00/100 (80.00') feet to a corner;

thence proceeding N 12°41'45" E, a distance of forty seven and 02/100 (47.02') feet to a corner;

thence proceeding S 76°18'35" E, a distance of seven hundred forty and 00/100 (740.00') feet to the said State of Rhode Island land and the point and place of beginning. The last five herein-described courses are bounded by the said Phillipsdale Landing Partners, L.P. land.

Case Number: PB-2009-5341
Filed In Providence/Bristol County Superior Court
Submitted: 7/30/2020 12:56 PM
Envelope: 2586238
Reviewer: Victoria H

Map 203 Block 1 Lot 4
Roger Williams Av. & Bourne Av.
East Providence, Rhode Island

The above-described parcel contains 854,981 square feet (19.628 Acres) more or less of land, and may be subject to and benefited by easements and rights of way of record.

Waterman Engineering Company

March 7, 2003

C:\BOLDGE\WORK\2002\210-408\TEEL\0210-0-0208\B15L.DOC

Case Number: PB-2009-5341
Filed in Providence/Bristol County Superior Court
Submitted: 7/30/2020 12:56 PM
Envelope: 2886239
Reviewer: Victoria H

Exhibit B

PROPERTY AERIAL Exhibit B

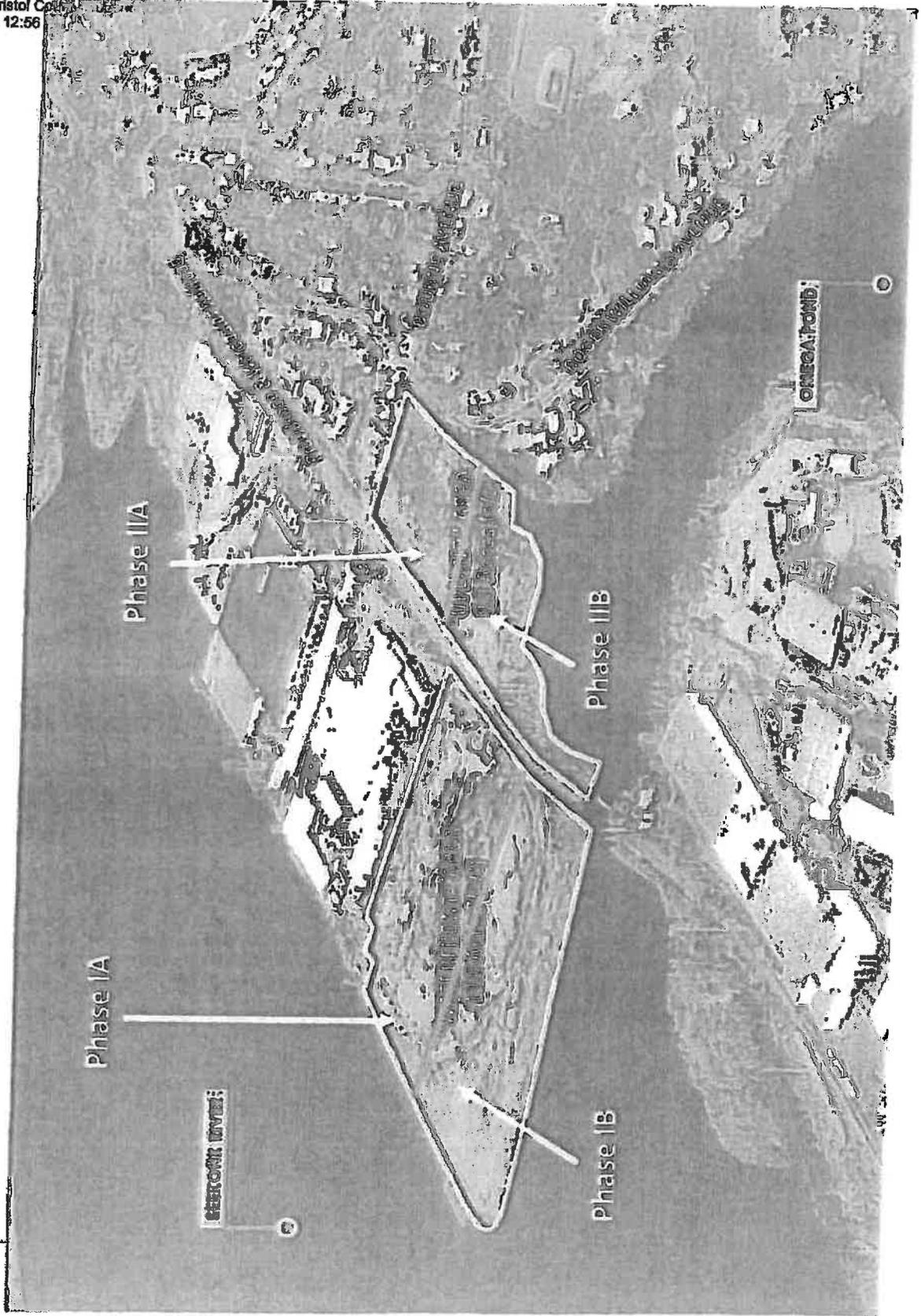


Exhibit D

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

GEONOVA DEVELOPMENT CO., INC. :

VS. :

C.A. NO. PB 09-5341

THE CITY OF EAST PROVIDENCE :

AMENDED ORDER

The Special Master's Petition for Instructions came on for hearing before this Court on the 16th day of September 2020. After hearing thereon, as well as consideration of the papers and pleadings submitted in connection with the instant matter and the representations of counsel in open Court, it is hereby:

ORDERED, ADJUDGED AND DECREED

1. Subject to obtaining a mutually-agreeable rail crossing agreement with The Providence and Worcester Railroad Company ("P&W") and the appropriate approvals from the Rhode Island Public Utilities Commission ("PUC"), the Special Master shall be allowed to re-establish an at grade rail crossing in conformance with the October 3, 1986 Railroad Operating Agreement attached at *Exhibit A* and the November 8, 1996 letter agreement attached at *Exhibit B* of the Special Master's Petition for Instructions;
2. The Special Master is hereby deemed to have the assent of the Rhode Island Department of Transportation to re-establish an at grade railroad crossing, pursuant to ¶1 above;
3. The Special Master is authorized to pursue a rail crossing agreement with P&W, provided the surface crossing is subject to P&W's design for requisite engineering and safety issues and the requisite maintenance schedule. In turn, any surface

crossing would be subject to the Court-approved Buyer's agreement to reimburse P&W for design cost and expense and for required maintenance;

4. The Special Master shall report back to the Court as to the progress of a proposed rail crossing agreement with P&W as approved the Buyer, prior to filing with the PUC;
5. This Order hereby supersedes and amends the Order previously submitted to the Court identified as Envelope Number: 2784890.

Enter as an assented to Order of this Court this 22nd day of October, 2020.

BY ORDER:

Brian P. Stern, J.
Associate Justice

ENTER:

/s/ Carin Miley
Clerk Deputy Clerk I
October 22, 2020

Submitted by:

/s/W. Mark Russo
W. Mark Russo, (#3937) In and Only In His
Capacity as Special Master for East Pointe
Ferrucci Russo P.C.
55 Pine Street, 4th Floor
Providence, RI 02903
Telephone: (401) 455-1000
E-mail: mrusso@frlawri.com

Certificate of Service

I certify that on the 14th day of October, 2020, the within document was electronically filed and electronically served through the Rhode Island Judiciary Electronic Filing System, on all parties registered to receive electronic service in this matter. The document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/W. Mark Russo

Exhibit E

AGREEMENT

Insofar as it has the legal right to do so, Licensee is hereby given by PROVIDENCE AND WORCESTER RAILROAD COMPANY, a corporation existing under the laws of Rhode Island, (hereinafter called "Railroad Company") whose business address is One Depot Square, Woonsocket, Rhode Island 02895 to OGRAN STATE STEEL, INC., a corporation existing under the laws of the State of Rhode Island (hereinafter called "Licensee") whose business address is 300 Bourns Avenue, East Providence, Rhode Island 02960 to construct, maintain and use a crossing at grade on, across and over the land and tracks of Railroad Company located at Baseline Station 114 + 42.2 of Railroad Company's East Providence Secondary Track as shown on the plan attached hereto and made a part hereof as Exhibit A, together with an emergency crossing ("emergency crossing") at Baseline Station No. 118 + 06.77 (hereinafter collectively called "Crossing") upon the following conditions, to all of which Licensee hereby agrees:

1. The term of this license shall date from April 1, 1989 to March 31, 1990 and shall continue thereafter, until terminated by a written notice given by either party to the other at least ninety (90) days prior to the date of termination; provided, however, that if at any time construction commences on the East Providence Industrial Highway in the area of the Crossing identified above, this license agreement shall terminate immediately without prior notice. Upon any termination of this license agreement Railroad Company shall refund to the Licensee the pro rata portion of the annual rent provided hereinbelow which the remaining portion of the then-current annual term of this license agreement bears to one year.
2. Licensee shall pay to Railroad Company, as an annual maintenance fee, the sum of \$12,000 in advance. It is understood and agreed that the rent set forth herein is intended to cover Railroad Company's cost of inspecting, routine maintenance and routine repairing of the Crossing. Routine maintenance and repairing does not include rehabilitation required as a result of deterioration, accidental damage to the Crossing, by derailment, vehicles or otherwise, acts of God, or vandalism ("Rehabilitation"). Any such Rehabilitation will be performed by Railroad Company at Licensee's cost and expense. To the extent possible, at least ninety (90) days prior to performing any such Rehabilitation, Railroad Company shall notify Licensee of Railroad Company's intent to perform such work and of the estimated cost of same. Licensee shall reimburse Railroad Company for the total actual, out-of-pocket costs and expenses, and indirect general administrative overhead costs of the Railroad Company, incurred by Railroad Company in performing such rehabilitation, including, but not limited to, material, mill labor, supervision, flagmen and applicable additives to said labor for taxes, benefits and overhead; and for use of tools and equipment furnished and associated costs in compliance with Railroad Company's billing practices in effect at the time of such invoicing; and payment shall be made by Licensee within thirty (30) days upon the receipt of a bill, however, if required by Railroad Company Licensee shall pay in advance, or secure the payment of any cost or expense herein mentioned.
3. Railroad Company, at the sole cost and expense of the Licensee (as provided herein), shall provide, erect and maintain such automatic gates, flashing light signals and pedestrian bells, or other crossing protection devices at each side of said Cross as shall be required by public authority or by Railroad Company in the exercise of Railroad Company's reasonable discretion, giving due consideration to the type and frequency of use of and of any other relevant factors relating to said Crossing. As respects any emergency crossing, same shall be secured by a gate which will be kept locked at all times when said crossing is not in use for emergency purposes. If any emergency crossing is used for other than emergency purposes, Railroad Company shall have the right to terminate this License Agreement immediately and remove the Crossing. Railroad Company will be provided keys to the gates. Licensee shall provide, erect and maintain on each side of said Crossing a sign satisfactory to Railroad Company indicating that said Crossing is a private way and is not open to public use.
4. Subject to the limitation on use of any emergency crossing set forth in Paragraph 3 above, Licensee shall permit said crossing to be used only by

- 2 -

Licensee, or the agents, tenants, guests, servants and contractors of Licensee and persons having business with Licensee and employees and agents of Ocean State Steel, Inc. Railroad Company shall erect at Licensee's sole cost and expense gates at each side of said Crossing. If required by Railroad Company, Licensee shall pay Railroad in advance for such costs. Licensee shall maintain said gates to the reasonable satisfaction of Railroad Company and shall keep said gates closed and locked at all times during railroad operation in the Railroad Company's Phillipdale Yard and when Licensee's business is not in operation.

5. Licensee shall not in any way or at any time interfere with the safe passage of Railroad Company's trains; and Licensee shall indemnify Railroad Company and save it harmless against any and all claims, demands, suits and expenses to which it may be subjected by reason of any work done or precaution omitted by Licensee or by the agents, servants, guests, tenants or contractors of Licensee with reference to the construction, maintenance or use of said Crossing, or by reason of any failure on the part of Licensee to perform any agreement herein contained, or by reason of injury to or death of Licensee or the agents, tenants, guests, servants or contractors of Licensee, or any person or persons who may use said Crossing, and loss of or damage to property of Licensee or of the agents, tenants, guests, servants or contractors of Licensee or of any person or persons using said Crossing, whether such injury to or death of persons or loss of or damage to property is caused by the negligence of Railroad Company or otherwise. This indemnification provision shall survive the termination of this license agreement as respect any incident occurring prior to the termination of the agreement. This indemnification provision shall not extend to the willful misconduct of the Railroad Company or its employees, agents or contractors.

Licensee shall save harmless Railroad Company from any loss or damage due to acts of vandalism or malicious mischief or theft arising out of incidents occurring to said Crossing and related signal devices, except for the willful misconduct of the Railroad Company or its employees, agents or contractors. Railroad Company shall have no liability whatsoever, except as set forth in this license agreement, and Licensee agrees to make no such claim against Railroad Company for any such loss or damage thereto.

6. In furtherance of the said obligation of Licensee to indemnify and save harmless Railroad Company, as set forth in Paragraph No. 5 hereof, Licensee shall procure and keep in effect during the term of this license a policy of insurance satisfactory to Railroad Company covering all the obligations of Licensee under said Paragraph No. 5, the said policy to be taken out in the name of Licensee with an assumed liability endorsement thereon in favor of Railroad Company, and shall name Railroad Company as an additional insured party, and shall contain the minimum limits indicated below ("B"), and the said policy containing the said endorsement shall be delivered to Railroad Company to be kept in its file. Licensee shall also obtain property insurance for damages caused to the Crossing and related signal devices and said policy shall list Railroad Company as a named insured. The said policies shall provide that they shall not be subject to cancellation or change of limits or terms without first giving Railroad Company sixty (60) days prior written notice.

("B") Not less than \$5,000,000 per occurrence for personal injury or personal injury or death, and \$1,000,000 for property damage for any one occurrence.

7. Upon the termination of this license, Railroad Company shall remove said crossing and restore the premises of Railroad Company to the same condition as they were prior to the construction of said Crossing, and Licensee shall pay to the Railroad Company the sum of Five Hundred Dollars (\$500.00), for said removal. The termination of this license shall not be construed as a waiver, discharge or surrender of the right of the Railroad Company to require performance of Licensee's duty to remove hereunder but said duty shall remain outstanding until discharged by Licensee. Any holding over or continued use

of the Crossing by Licensee, the agents, tenants, guests, servants, contractors or any other person having business with licensee or who may use said Crossing beyond the termination of this license shall be on the same terms and conditions as herein expressed.

8. If the default be made by Licensee in the observance or performance of any of the covenants or conditions of this license, or if the license is otherwise terminated, it shall be lawful for Railroad Company to re-enter and resume possession of said premises, and the same to have again, repossess and enjoy, or to dispossess and remove all the Crossing and signal devices therefrom without liability in the law or equity for any damage caused by such removal. Licensee hereby expressly waives the service of any notice to quit or of intention to re-enter and remove, after the occurrence of a default by the Licensee not waived by Railroad Company, and Licensee expressly covenants and agrees to pay and make good to Railroad Company any deficiency in the amount of fees and/or any other payments due under this license, and for any costs and expenses incurred for attorney fees by Railroad Company in enforcing the terms of this agreement, in collecting payments due herein and/or in any action against the Licensee to remove said Crossing and signal devices. Railroad Company agrees to pay any costs and expenses, including attorney's fees, incurred by Licensee in enforcement of Railroad Company's obligations under this license agreement and for collection of any sums owing to the Licensee.

9. If Licensee becomes delinquent for the payment of any fee charge, tax or other amount due under the terms of this license and remains delinquent for a period of more than twenty (20) days, Licensee shall pay to Railroad Company a late charge of one and one-half percent (1½%) per month (eighteen percent (18%) per annum) of the amount past due or delinquent. The late charge shall be charged from the date the payment first became due and payable until paid. All payments made shall be first applied to any outstanding penalties and next to the oldest outstanding invoice or rental period.

10. No provision of this Agreement may be waived or altered, nor shall Licensee assign or otherwise convey, any rights in or to use said Crossing, or any rights under this Agreement, unless the written consent of Railroad Company shall be first obtained.

11. This license shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties respectively.

12. Licensee shall be required to maintain the Crossing only for its own use and purposes and shall have no obligation to any third party to keep the Crossing or the roadways leading to it free from snow or debris or otherwise passable.

IN WITNESS WHEREOF, the parties have hereto set their names as of the 15th day of March, 1989.

Witness:

PROVIDENCE AND WORCESTER RAILROAD COMPANY

By Arnold P. Chagnon

Its

Witness:

M. D. [Signature]

OCEAN STATE STEEL, INC.

By Daniel W. Schlett
Daniel W. Schlett
Its President

Case Number: PB-2009-5341
Filed in Providence/Bristol County Superior Court
Submitted: 8/18/2020 12:31 PM
Envelope: 2707895
Reviewer: Janna F.

APR-15-2024 19:41 FROM: ROBERT EUERTON

5281699-7731

TD:12189055578

P.4

- . 8

EXHIBIT A

Grade Crossing Map

Exhibit F

**Connecticut
Steel Corp.**

A Company of Van Moort Group
35 Tooliks Road
P.O. Box 828
Wallingford, CT 06493
Telephone: 203-265-0615
Telefax: 203-264-8125

**Ocean State
Steel, Inc.**

A Company of Van Moort Group
200 Bourne Avenue
East Providence, RI 02916
Telephone: 401-434-6490
Telefax: 401-434-2632

November 8, 1996

Mr. Ronald P. Chrzanowski
Vice President - Real Estate
Providence & Worcester Railroad
One Depot Square
Woonsocket, Rhode Island 02895

Re: Ocean State Steel Crossing License - Suspension and Reinstatement;
LETTER AGREEMENT ("this Letter Agreement")

Dear Mr. Chrzanowski:

Reference is hereby made to a certain Agreement, (the "Agreement") dated as of March 15, 1989 between Ocean State Steel, Inc. ("OSSI") and Providence and Worcester Railroad Company ("P&W"), as supplemented by a Note and Agreement dated as of November 21, 1989, relating to construction, maintenance and use of a certain grade crossing (the "Crossing") over the land and railroad tracks of P&W to allow access to the real property of OSSI located in East Providence, Rhode Island (the "OSSI Property").

Pursuant to the terms of the Agreement, either party may terminate the Agreement by notifying the other party on or before December 31st of each year. In the event of such termination the Agreement provides that the Crossing shall be removed and OSSI may no longer use the Crossing for access to its property.

In May 22, 1994 OSSI ceased its business operations and shortly thereafter Mr. Merton Robinson, of OSSI, informed you of this situation and that the Crossing was not being used. Mr. Robinson also informed you that OSSI was seeking to sell its steel-making equipment and the OSSI Property and that a prospective purchaser may wish to use the Crossing in the future. Mr. Robinson also discussed with you the temporary suspension of the use of the Crossing, rather than termination of the Agreement and its removal, and the suspension of OSSI's payment of rent and other obligations pursuant to the Agreement during this suspension.

Unfortunately, significant time has elapsed since Mr. Robinson's discussion with you, and bills for annual rental were sent to OSSI's old office address and not received. Recently the address was corrected and OSSI received a bill for rent (and, apparently, late charges) showing a balance owing of \$18,075.00.

OSSI and P&W desire to provide for a suspension of the rights and obligations of the parties pursuant to the Agreement and to allow OSSI, or a successor owner of the OSSI Property, to reinstate the Agreement and the Crossing in the future.

Mr. Ronald P. Chrzanowski, Vice President
Providence & Worcester Railroad
Re: Suspension and Reinstatement of
Crossing License
November 8, 1996
Page 2

By signing below, OSSI and P&W agree as follows:

1. **Suspension of Crossing Agreement:** Notwithstanding the terms of the Agreement, the rights and obligations of the parties pursuant to the Agreement are hereby suspended, pending termination or reinstatement by the parties pursuant to this Letter Agreement. The period from the date of this Letter Agreement to the date of such reinstatement or termination pursuant to this Letter Agreement is referred to herein as the "Suspension Period". During the Suspension Period neither party shall have any rights or obligations pursuant to the Agreement, except as may be set forth in this Letter Agreement. Without limiting the generality of the foregoing, during the Suspension Period no rent shall be payable by OSSI or by any successor owner of the OSSI Property and no use of the Crossing shall be permitted by OSSI or by any such successor owner of the OSSI Property, except as otherwise set forth in this Letter Agreement.
2. **Locking of Crossing Gates and Occasional Access:** The Crossing shall not be removed or obstructed by P&W during the Suspension Period. OSSI, or a successor owner of the OSSI Property, shall, during the Suspension Period, lock the gates, which are owned by OSSI on both sides of the Crossing and shall not allow access to the Crossing. Notwithstanding the foregoing, during the Suspension Period either P&W or OSSI may occasionally have access to the Crossing, for maintenance or other access purposes, over the OSSI Property, provided that the other party consents in writing to each such occasional access. The rights and obligations of the parties regarding such occasional access to the Crossing, with respect to insurance obligations and indemnification for damage to persons or property, shall be in accordance with the terms of the Agreement.
3. **Reinstatement of Crossing Agreement:** During the Suspension Period, OSSI or any successor owner of the OSSI Property may reinstate the Crossing and the rights and obligations of the parties pursuant to the Agreement by delivering written notice to P&W of such reinstatement, provided that any such successor Owner of the OSSI Property also agrees in such notice to undertake and discharge all of the obligations of OSSI to P&W under the Agreement. Upon receipt by P&W of said notice of reinstatement, the rights and obligations of the parties pursuant to the Agreement shall be reinstated and shall continue in full force and effect thereafter. Upon such Reinstatement, P&W shall bill OSSI or such successor owner of the OSSI Property for that proportion of the annual rental, pursuant to the Agreement, for such year which the portion of the rental year remaining, from the date of such notice of reinstatement to the next March 31st, bears to one year. The party sending such reinstatement notice shall pay said rental amount for the current rent year within twenty (20) days after receipt of said bill, pursuant to the provisions of paragraph 9 of the Agreement.

Mr. Ronald F. Cirzanowski, Vice President
Providence & Worcester Railroad
Re: Suspension and Reinstatement of
Crossing License
November 8, 1996
Page 3

4. **Termination of Agreement:** During the Suspension Period either party to the Agreement may terminate the Agreement and this Letter Agreement pursuant to the termination provisions of paragraph 1 of the Agreement, by sending written notice to the other party at least ninety (90) days prior to such date of termination.

5. **Waiver of Past Rent and Charges:** P&W hereby waives and discharges all of the charges for rent pursuant to the Agreement outstanding as of the date of the execution of this Letter Agreement by P&W.

6. **Sale of Property by OSSI:** Upon the sale by OSSI of the OSSI Property to a successor owner, OSSI shall notify P&W of the name and address of said successor owner, and, upon such successor Owner agreeing in writing to undertake and discharge all of the obligations of OSSI to P&W under the Agreement and this Letter Agreement, any and all obligations of OSSI pursuant to the Agreement or this Letter Agreement shall lapse and terminate and P&W shall look solely to said successor owner of the OSSI Property for the performance of any and all obligations of OSSI pursuant to the Agreement or this Letter Agreement.

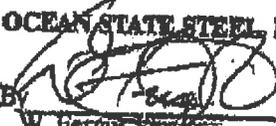
This Letter Agreement is sent to you in duplicate. If the foregoing terms are in accordance with your understanding, please evidence your agreement to these terms by executing an enclosed duplicate on the space provided below and return the executed copy to the undersigned, whereupon this Letter Agreement shall constitute a binding agreement between the parties. This Letter Agreement shall be binding upon OSSI and P&W and their successors and assigns and constitutes the entire agreement of the parties with respect to its subject matter.

This Letter Agreement is the result of the joint effort of and negotiations between the parties hereto and should not be construed more favorably toward one of the parties than the other. Each of the enclosed original duplicates of this Letter Agreement shall constitute an original.

Thank you for your time and consideration.

Very truly yours,

OCEAN STATE STEEL, INC.

By 
W. Fergus Fitch
Its President

Case Number: PB-2009-5341
Filed in Providence/Bristol County Superior Court
Submitted: 8/18/2020 12:31 PM
Envelope: 2707895
Reviewer: Janna F

APR-15-2004 19:37 FROM: ROBERT ELERTON

5081699-7731

TO: 12128055578

P. 6

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Mr. Ronald P. Chrzanoski, Vice President
Providence & Worcester Railroad
Re: Suspension and Reinstatement of
Crossing License
November 8, 1996
Page 4

ACCEPTED AND AGREED UPON:

PROVIDENCE AND WORCESTER RAILROAD COMPANY

By Ronald P. Chrzanoski
Its V. P. REAL ESTATE & ENGR.
Duly Authorized

Date Signed: 12-27-96

cc: A. Von Moos
M. Robinson

Exhibit G

06704

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RAILROAD OPERATING AGREEMENT

THIS AGREEMENT made as of the 3rd day of October, A.D. 1986 by and between the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS acting by and through the RHODE ISLAND DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the "State") and the PROVIDENCE AND WORCESTER RAILROAD COMPANY, One Depot Square, Woonsocket, Rhode Island 02895 (hereinafter referred to as the "PRW").

W I T N E S S E T H

WHEREAS, by deed of even date herewith, PRW did convey to the State lines of railroad being a portion of the East Providence Secondary Track and the Bristol Secondary Track so-called running from the Rhode Island/Massachusetts state line at Pawtucket, Rhode Island southerly to station 724+35.34 of the monumented base line of the Providence, Warren and Bristol Railroad in the City of East Providence, Rhode Island, along with a non-exclusive perpetual right and easement for railroad purposes over the portion of the East Providence Secondary Track located in the Town of Attleboro, Massachusetts; this property more fully described in said deed,

WHEREAS, in the aforementioned deed, PRW did reserve to itself, its successors and assigns, an easement to conduct railroad operations over said line of railroad, the terms and conditions of which easement were to be set out in a Railroad Operating Agreement referred to in said deed; and

WHEREAS, the parties desire that this Agreement shall constitute the Railroad Operating Agreement referred to in said deed and shall set out the terms and conditions governing the easement to conduct railroad operations reserved by PRW in its deed to the State;

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NOW THEREFORE, for and in consideration of the foregoing premises and the mutual promises and covenants hereinafter set forth, the parties hereto agree, with the intention of being legally bound hereby, to the following:

1. RAIL OPERATING EASEMENT. P&W does reserve to itself, its successors and assigns, an easement to conduct rail service over said lines of railroad which shall be exclusive with respect to rail freight service and non-exclusive with respect to rail passenger service, provided that P&W shall not provide regularly-scheduled rail passenger service without the prior written approval of the state, which shall not be unreasonably withheld, except that no such approval shall be required for excursion service, and which shall include all necessary rights:

- (a) To operate trains, cars, locomotives and other rail equipment;
- (b) To occupy and use stations, buildings and other facilities, if any (and replacements thereof), subject to the prior written approval of the State which approval shall not be unreasonably withheld;
- (c) To construct, operate and maintain additional or substitute stations, buildings and other facilities which are reasonably necessary or legally required in connection with the provision of rail service, subject to the prior written approval of the State which approval shall not be unreasonably withheld;
- (d) To construct contiguous or adjacent additional rail lines and trackage and install necessary track connections, subject to the prior written approval of the State which approval shall not be unreasonably withheld;
- (e) To provide all new and additional rail service at any point, subject to the prior written approval of the State which shall not be unreasonably withheld; and

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(f) To adjust trackage as the current and reasonably foreseeable needs of rail users permit or require, subject to the prior written approval of the State, which approval shall not be unreasonably withheld;

(g) To have reasonable access to permit the exercise of the foregoing easements and rights.

The State shall make the final determination as to the continuance of existing easements, licenses, rights or privileges which are not permanent in nature or the grant of new additional easements, licenses, rights or privileges (including air rights but excluding rail freight easements or rights) affecting the properties covered by this Agreement; provided, however, that State shall not permit the continuance of agreements it has the right to terminate nor shall it grant new or additional easements, licenses, rights or privileges (including air rights) affecting said properties if there is or will be any interference caused thereby to the conduct of railroad operations upon such properties. All existing agreements (which can be modified or upon renewal of such existing agreements), or new or additional easements, licenses, rights or privileges (including air rights) affecting said properties shall be in conformity with B&W's railroad operating and safety and insurance requirements, and any facilities on or near the property conveyed shall be removed, modified or installed under the supervision and reasonable instructions of the Chief Engineer of B&W in order to prevent interference with railroad operations. State shall not convey in fee (or any lesser estate), any part of the property covered by this Agreement so as to impair, impede, or interfere with the conduct of railroad operations or impair or destroy the continuity or integrity of the rail system.

State shall first consult with the Chief Engineer of B&W before making any such

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final determination, and P&W's chief engineer shall provide his conclusions to State within a reasonable time after such consultation. P&W neither assumes any obligation other than expressly stated in this Agreement, nor assumes any obligation with respect to rail services previously operated by it or any other railroad over the subject rail line. The State assumes no obligation other than expressly stated in this Agreement. This railroad service easement shall continue so long as P&W shall provide rail freight service which shall reasonably meet the needs of shippers on said line of railroad. So long as this easement shall remain in force, said easement shall be exclusive with respect to rail freight service, and the State shall not allow any other rail freight operator to use said line of railroad.

The State in conjunction with the City of Pawtucket plans to improve the East Pawtucket Industrial Highway from Beverage Street to Roosevelt Avenue, and in conjunction with the City of East Providence plans to construct the East Providence Industrial Highway (hereinafter collectively referred to as Projects). P&W is not obligated to contribute toward the cost of the Projects. All work arising out of or connected with the Projects must be closely and safely integrated with P&W's operations on tracks adjacent to and across the Projects so as not to impede or interfere with safe rail operations. The State and P&W will execute construction and maintenance agreements for each of the Projects set forth above to accomplish the foregoing and to delineate the division of work on, and the obligation to pay the costs of each Project.

2. SUBCONTRACTING. The P&W may subcontract railroad operations on said line of railroad to others subject to prior written approval of the State, which approval shall not be unreasonably withheld. However, subcontracting of railroad operations by the P&W shall not relieve the P&W of any liabilities or

responsibilities detailed herein.

REC-643 P&W 085

3. COLLECTION OF REVENUES. P&W shall perform all accounting related to interline settlements and per diem charges, collect all freight charges from shippers and consignees, and handle per diem, interline settlement, and other accounts with other railroad companies and others in accordance with standard interline settlement procedures and good business practices. The State shall have the right to audit the records of P&W during regular business hours.
4. TERMS. The railroad service easement and the provisions of this Agreement shall remain in effect for so long as P&W shall provide railroad freight service which shall reasonably meet the needs of shippers on said line of railroad.
5. PAYMENTS TO THE STATE OR TO P&W. P&W shall not receive any operating subsidy from the State of Rhode Island in connection with its operation of railroad service over said line of railroad, and P&W shall not be obligated to make any payment whatsoever to any city or town through which said line of railroad runs or the State for the use of such track or for taxes or any payments in lieu of taxes, except as otherwise provided in an agreement between P&W and the State dated *September 26, 1888*. Except as herein otherwise provided, P&W shall not be required to make any payment to the State for the rail service easement.
6. MAINTENANCE. So long as it shall conduct railroad operations over said line of railroad, the P&W shall be responsible for the maintenance of track, railroad highway grade crossing signals—including flashing lights, train detection systems, crossing gates (except traffic signals)—and maintenance of all other railroad facilities used by it on said line of railroad. The P&W shall maintain the rail facilities to existing freight service standards; provided, that if the rail facilities shall be rehabilitated using federal or state funds, then P&W shall thereafter maintain said rail facilities to any

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higher freight service standards resulting from such rehabilitation. The State shall not reimburse the P&W for any costs incurred under this paragraph.

The P&W shall maintain other rail related structures and facilities which it uses such as, but not limited to, signals, switches and drainage in good working condition. The P&W shall maintain any buildings it occupies or bridges it uses in the condition said buildings or bridges are in on the date of P&W's first occupancy or use following the date hereof, substantive damage by fire, storm or other catastrophic damage excepted.

To the extent required by applicable law, P&W agrees to maintain without compensation existing public crossings which are reconstructed as part of the East Pawtucket Industrial Highway Project. Provided, however, that nothing in this agreement shall be construed as altering the obligations of the City of Pawtucket to maintain the property it owns and over which the Railroad and the State have a rail easement. P&W also agrees to maintain to the extent required by applicable law without compensation new crossings which are created as part of the East Pawtucket Industrial Highway Project, which have been declared public crossings and approved by the Rhode Island Public Utilities Commission under the General Laws of the State of Rhode Island. Provided, further that nothing in this agreement shall be construed to limit in any way P & W's rights to pursue compensation for the costs to maintain crossings from the parties benefitted by them. Nothing in this paragraph shall be construed as limiting the ability of the Rhode Island Public Utilities Commission to establish other crossings in the future.

7. COSTS OF OPERATION. The P&W shall be responsible for all costs and charges associated with the operation of freight service provided by the P&W on said line of railroad which are levied by others.

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8. REPORTS TO OTHERS. The P&W shall determine and be responsible for the development and submission of all required reports and other documents to the Interstate Commerce Commission, the Federal Railroad Administration, the Rhode Island Public Utilities Commission, other railroads and to any other persons or agencies. The P&W shall provide copies of all reports and documents to the State at the time of submission.

9. FREQUENCY OF SERVICE. The P&W shall provide rail freight service with a frequency sufficient to meet the reasonable needs of shippers on said line of railroad.

10. REPORTS TO THE STATE. If requested by the State, P&W shall submit semi-annual reports to the State detailing the following:

a. Description of rail freight cars handled:

- Type of car
- Commodity carried
- Commodity weight in tons
- Origin and destination
- Shipper

b. Frequency of operation

c. Description of maintenance performed on the line. All such information provided to the State shall be held by the State in strict confidence and shall not be made available to any third party without the express written consent of P&W.

11. PASSENGER OPERATIONS. If the State shall permit a responsible third party to provide rail passenger service on said line of railroad, then, with respect to these passenger operations, P&W shall:

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- a. Allow said third party to provide rail passenger service on said line of railroad.
- b. Administer and coordinate freight and passenger train schedules with said third party in a reasonable manner.
- c. Not unreasonably restrict the operation of rail passenger operations on said line of railroad.

12. MAINTENANCE FOR PASSENGER OPERATIONS. The P&W shall have no liability or responsibility for any maintenance to said line of railroad to accommodate rail passenger service.

13. CONDITION AND MAINTENANCE. The P&W has inspected and accepts said line of railroad in its present condition and agrees that no representation or warranties with regard to condition or fitness for use have been made that are not specifically expressed herein; and further agrees upon the termination of this easement, to peaceably quit and deliver possession of said line of railroad to the State.

14. IMPROVEMENTS. P&W shall not erect any structures or cause any improvements to be placed upon said line of railroad without first soliciting and obtaining the written approval of the State, which consent will not be unreasonably withheld for rail related structures or improvements. Any structure and improvement permitted by the State shall be kept in good order, repair and safe condition, it being understood and agreed that all such structures and improvements made by the P&W that are removable without damage to said line of railroad are the personal property of the P&W and may be removed by the P&W upon termination of this easement except as herein otherwise provided.

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15. ASSIGNING, UNDERLETTING. Except as provided in Paragraph 2 hereof, the P&W shall not assign or transfer this easement in whole or in part, or sublet said line of railroad or any part thereof, without the prior written consent of the State, which consent will not be unreasonably withheld, and the P&W shall not mortgage or otherwise encumber or permit to be encumbered any of the real and personal property owned by the State. If P&W shall assign or transfer the easement, P&W shall have no further liability hereunder except for liabilities accrued prior to the effective date of such assignment or transfer.
16. RIGHT TO INSPECT. The P&W shall permit the State or its authorized agent to enter upon said line of railroad for the purpose of inspecting the same at any reasonable time or times during the continuance of this easement without prior notice.
17. ADVERTISING. No advertising shall be placed upon said line of railroad except as shall be authorized by the State in writing (not to be unreasonably withheld) and to advertise the P&W's own business. All such advertising must have the prior written consent of the State (not to be unreasonably withheld) and shall be removed by the P&W upon termination of this easement.
18. ORDINANCES. The P&W at its sole cost and expense, shall comply with and obey all applicable laws, ordinances, rules, regulations and requirements of all Federal, State, Municipal, Town, City or other governmental authorities and the various departments thereof now existing or hereafter created, unless the same relate to an obligation undertaken by the State under other sections of this agreement.

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19. HAZARDOUS USE. The P&W agrees that said line of railroad shall not be used for storage of flammable, explosive or hazardous material, waste or occupation except as may be required for railroad operations. This provision shall not be construed to prohibit the movement of any such material or waste in rail freight cars over the line.
20. INDEMNIFICATION. The P&W will be responsible for and will indemnify, save harmless and defend the State against and from any and all claims and suits, for and any liability, loss or expenses (including reasonable attorney fees) arising from or incidental to or in connection with damage to or loss of property of the State, P&W, or of agents, servants, or employees of either or of any person, and against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, injury to or death of persons, including agents, servants, or employees of the State or of the P&W, or any other person which said damage, loss or injury or death shall arise in any manner, directly or indirectly, out of or incidental to or in connection with, this easement or the use or occupation of said line of railroad by P&W, unless the same shall relate to obligations hereunder which the State shall have failed to perform or relate to passenger operations or other activities conducted by the State or by a third party.
21. INSURANCE. P&W will use its best efforts to carry adequate Railroad liability insurance during the continuance of this easement. P&W currently carries at least Two Million Dollars (\$2,000,000) single limit for bodily injury and/or property damage combined, endorsed to protect the State from all claims of bodily injury (including death) and property damage arising out of

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the services performed or to be performed by the P&W and its employees, agents or assignees, with a \$250,000 self-insured retention. P&W will endeavor to maintain that coverage. The parties expressly understand and agree that current insurance market conditions may prevent P&W from maintaining such coverage either due to unacceptable premiums or unavailability of coverage and that P&W agrees to keep State apprised of its insurance coverage, and will provide the State with written evidence of such insurance and all renewals within ten (10) days. Said insurance policy shall provide that the insurance will not be cancelled, changed or modified in any way without thirty (30) days prior written notice to the State. The providing of any insurance coverage shall not be deemed a limitation on the liability of the P&W as provided under paragraph 20 hereof or elsewhere herein in this agreement, but shall be additional security therefor.

22. ALTERATIONS. The P&W shall not make any alterations, additions or improvements on or to said line of railroad without the prior written consent of the State which shall not be unreasonably withheld; and all alterations, additions or improvements which may be made by the P&W upon said line of railroad, unless herein otherwise provided (except the property of the P&W, as defined in Section 14 herein) shall be the property of the State and shall remain upon and be surrendered with said line of railroad as part thereof at the termination of this easement without disturbance, molestation or injury.

23. RESPONSIBILITY OF THE P&W TO ITS EMPLOYEES. The P&W in the performance of any and all work by the P&W under the terms of this easement or otherwise, upon or adjacent to said line of railroad, will furnish all labor and supervisory forces of every kind and the P&W shall employ, pay from the P&W's own funds and have the right to discharge all persons engaged in the performance of such work and all such persons shall be and remain the sole employees of the P&W and subject to the P&W's exclusive supervision, direction and control.

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24. LIENS AND CHARGES. The P&W, within sixty (60) days after completion of any construction, alteration, repair or improvement in or upon said line of railroad, shall furnish to the State a certified statement that all charges for labor and materials furnished have been paid, together with releases of liens. The creation or imposition of any lien or charge upon said line of railroad through acts or omissions of the P&W, its agents, contractors or subcontractors shall be deemed a default under the provisions of this Agreement.

In the event any such lien or charge shall not be paid or bonded by the P&W within fifteen (15) days after the lien or charge accrues, the State shall have the right to pay such lien or charge if it so wishes and the P&W shall repay the cost to the State with interest at twelve (12) percent per annum from the date of payment by the State, promptly upon rendition of bill therefor.

Nothing in this paragraph or in any other paragraph of this Agreement shall be construed as authority to the P&W to create any lien on the State's property.

25. UTILITIES. The P&W, at its sole cost and expense, shall arrange for and obtain necessary heat, water, electricity, sewage, storm drainage and other utility services required for its use. In the event it is impossible or impracticable to secure any of such services other than through facilities owned by the State, the P&W shall install at its expense necessary connections, supply lines and (where permitted, meters to measure the P&W's consumption of such services and shall pay to the State upon demand, any costs incurred by the State for any such installation and, further, shall pay for such services, upon demand, at reasonable rates as determined by the State. The State shall not be liable for any temporary suspension of any such services.

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26. REMOVAL. Upon the termination of this easement, for reasons other than default on the part of the P&W, the P&W, at the P&W's sole cost and expense, may remove from said line of railroad any materials, buildings and structures including foundations, not owned by the State, as provided in Section 22 hereof and all waste, rubbish and debris, and all such work of removal shall be completed on or before thirty (30) days following the termination of this easement. Should the P&W decline to so remove such property, then and in such event, the State shall have the following rights, which are hereby expressly given it, viz.: to remove such property at the expense of the State, or to sell any such property and retain the proceeds of such sale and to deliver such property to the purchaser or purchasers thereof free and clear of any right, title or interest therein of the P&W or of any person or corporation claiming through or under the P&W and without any liability whatsoever to the P&W or to any other person or corporation; or, if the State so elects, in lieu of such sale or removal of such property, the State may retain and use the same for any purpose whatsoever free and clear of any right, title or interest therein of the P&W, or of any person or corporation claiming through or under the P&W and without any liability whatsoever to the P&W or to any other person or corporation.

27. DEFAULT AND RE-ENTRY. If default shall be made by the P&W in any agreements herein contained on the part of the P&W to be kept or performed, and if any such default shall not be cured within ninety (90) days after the P&W has been given notice by the State to do so or within such reasonably longer time as may be necessary for P&W to diligently cure such default, such time period shall be agreed upon in advance in writing between the State and P&W, or if the demised premises shall not be used by the P&W for the purposes herein authorized for a period of more than ninety (90) days (unless caused by an act

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of God or a strike of employees), or if the demised premises should at any time be used by P&W for purposes other than those permitted, then, in any such case, the State may, by written notice to the P&W, immediately declare this easement terminated, and in such event, the State shall have the right to remove the P&W by summary proceedings and thereafter the State may re-enter upon and take possession of the lines of railroad and every part thereof, either by force or otherwise, without being liable to any prosecution, action or damages therefore and have and enjoy said lines of railroad as of its former estate free, clear and discharged of this easement and of all rights of the P&W hereunder, and the P&W also shall pay to the State upon demand all fees and expenses, including reasonable attorney fees, incurred in connection with and in obtaining possession of the lines of railroad as aforesaid.

28. FIRE AND DAMAGE. In case any building of the State on said line of railroad which is used by P&W shall be partially damaged by fire or any other casualty, but not rendered untenable thereby, the same shall be repaired by the P&W promptly upon receiving the State's approval of estimated costs furnished by the P&W for restoration of the building to its former condition; and, the State will reimburse the P&W only the extent of any insurance proceeds received by the State but not, however, to exceed the cost to the P&W of the repairs as made. In case any such damage shall be so extensive as to completely destroy such building or render it untenable and the lines of railroad without the use of such building is substantially useless to the P&W, then such building shall be rebuilt or put in repair by the State, but the State may elect not to rebuild or repair such building and may retain all insurance proceeds; and upon being notified by the State that the State elects not to rebuild or repair, the P&W shall have the option to surrender this easement and thereupon this Agreement shall cease, terminate and come to an

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and, or the P&W may elect to rebuild or repair such building at its own expense, and thereafter, such building shall become the property of P&W, if P&W so elects to own such building, or otherwise it shall become the property of the State.

The provisions of the foregoing two (2) paragraphs of this Section shall be operative only if such damage or destruction was not caused by carelessness, negligence or improper conduct of the P&W or of the P&W's agents, servants or employees. If such damage or destruction is caused by carelessness, negligence or improper conduct of the P&W or of the P&W's agents, servants or employees, the P&W shall promptly repair or rebuild such building to its former condition, but the State will reimburse the P&W to the extent of proceeds received by the State from insurance, but not to exceed the cost to the P&W of the repairs as made.

For the purposes of this Section 28, the word "building" shall be read in plural where there is more than one building on said lines of railroad and for the purposes of this paragraph, the "building" shall be construed as including any and all structures, equipment and improvements now or hereafter constructed or placed upon said lines of railroad by the State.

29. TERMINATION. In the event that the P&W abandons or permanently terminates rail freight service on said line of railroad, the P&W shall immediately terminate operations on said lines upon receipt of written notice from the State. In the event of the termination of this easement, whether under the provisions of this Section 29 or otherwise, the P&W shall quit and deliver possession of said lines of railroad to the State on or before such date of termination. In the event P&W decides to abandon its operations over the line, it shall give the State not less than ninety (90) days prior written notice before abandoning such operations. P&W may suspend freight service for a limited period of time upon obtaining the prior written approval of the State.

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30. PRIOR APPROVAL. Any leases, licenses, easements and agreements which may hereafter affect said lines of railroad or any renewals, modifications, consolidations, replacements and extensions (unless the same shall be automatic) of any existing leases, licenses, easements and agreements affecting said lines of railroad shall be subject to the prior review and approval of P&W, with respect to impacts on rail operations which approval shall not be unreasonably withheld.

31. INABILITY TO PERFORM. This easement and obligation of the P&W to keep and perform all agreements hereunder on the part of the P&W to be kept or performed shall in no way be affected, impaired or excused because the State is unable to fulfill any of its obligations under this Agreement, if the State is prevented or delayed from so doing by reason of labor troubles or any outside cause beyond the control of the State, including, but not limited to, governmental action or preemption, Act of God, war or civil commotion.

32. LOSS OR DAMAGE TO PERSON OR PROPERTY. The State shall not be liable to the P&W for any loss, injury or damage which may happen to the person or property of the P&W, of the P&W's agents, employees or of persons claiming under the P&W, while on or about the line of railroad, caused by theft, fire, or by the handling of electrical installations, or by accident to or breakage of any of the machinery, piping or plumbing, fixtures or other appurtenances connected with any building upon said line of railroad, or by water, rain or snow which may leak into, issue or overflow from any part of any such building, unless same is caused by the negligence of the State or its employees or agents.

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33. NOTICES. Notices given under the terms of this Agreement shall be deemed sufficiently served if such notice is mailed by certified mail, return receipt requested, or is delivered personally. If in the case of the P&W, such notice is mailed or delivered to the P&W at the P&W's address set forth on the first page hereof. If, in the case of the State, such notice is mailed or delivered to the State at the State's office at:

Rhode Island Department of Transportation
Office of Property Management
State Office Building, Room 323
Providence, Rhode Island 02903

or at such other place as the State or P&W may, from time to time, designate in writing to the other.

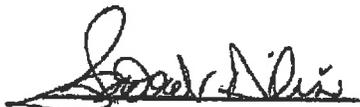
34. SEPARABILITY. The provisions of this Agreement are severable and it is the intention of the parties hereto that if this Agreement take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts thereof, the remaining provisions of this Agreement shall be given full force and effect as completely as if the part or parts held invalid had not been included herein.

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35. APPROVAL. This Agreement shall be effective only subsequent to its approval by the State Properties Committee as designated below.

IN WITNESS WHEREOF, the State and the PSW have duly executed this Agreement in duplicate as of the 3rd day of October, A.D. 1986.

WITNESS:



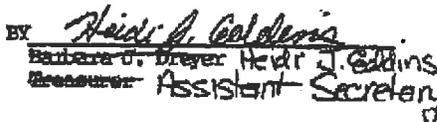
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

BY 
Director, Department of
Transportation

WITNESS:



PROVIDENCE AND WORCESTER
RAILROAD COMPANY

BY 
Barbara D. Brewer Heidi J. Edkins
Treasurer Assistant Secretary

BOOK 643 PAGE 099

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence on this 27th day of September, A.D. 1986, before me personally appeared MATTHEW S. GU, JR. to me known and known by me to be the Director of the Rhode Island Department of Transportation and the party for and on behalf of the State of Rhode Island and Providence Plantations executed the foregoing instrument and he acknowledged said instrument by him so executed to be his free act and deed individually and in said capacity and the free act and deed of the State of Rhode Island and Providence Plantations.

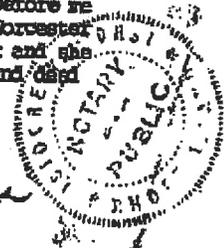
[Signature]
Notary Public

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE
PROVIDENCE

In Providence on this 3rd day of October, A.D. 1986, before me personally appeared BARBARA J. BREYER, Assistant Secretary of Providence and Worcester Railroad Company and the party who executed the foregoing instrument and she acknowledged said instrument by her so executed to be her free act and deed individually and in said capacity.

ISIDORE V. D'ORSI
NOTARY PUBLIC
MY COMMISSION
EXPIRES 8-30-91

[Signature]
Notary Public



APPROVED:

BY Dennis M. Lynch
State Purchasing Agent

APPROVED:

BY Dennis M. Lynch
Chairman, State Properties
Committee

APPROVED:

BY Nicholas A. Buccala
Director of Administration
and Member of State
Properties Committee

APPROVED:

BY Edward L. Cahill
Public Member
State Properties
Committee

APPROVED:

BY Liam J. Clifton, Jr.
Sgt. Atty. Gen. Attorney General and Member
of State Properties Committee

EAST PROVIDENCE, R.I.
JAMES H. BEELER, JR.
CITY CLERK
1986 OCT - 3 AM 11:14

RECORDED

Exhibit H

Case Number: PB-2009-5341
Filed In Providence/Bristol County Superior Court
Submitted: 8/18/2020 12:31 PM
Envelope: 2707895
Reviewer: Janna F.



55 PINE STREET, PROVIDENCE, RI 02903
401.455.1000 WWW.FRLAWRI.COM

W. Mark Russo
WRUSSO@FRLAWRI.COM

August 7, 2020

Via e-mail: stephen.devine@dot.ri.gov

E-mail: vera.diluglio@dot.ri.gov

Stephen A. Devine
Administrator - Office of Transit
Rhode Island Department of Transportation
Two Capitol Hill, Room 316
Providence, RI 02903

Vera H. Querceto, Esquire
Chief Legal Counsel
Rhode Island Department of Transportation
Two Capitol Hill
Providence, RI 02903

Dear Stephen and Vera:

I am the Court-appointed Special Master of the property known as East Pointe which is further described as Assessor's Map 303, Block 13, Parcels 4 and 5 and Map 203, Block 1, Lot 4 in the Land Evidence Records for the City of East Providence. As you know from our recent discussion, this site is the former site of Ocean State Steel, Inc.

In the 1989, Ocean State Steel, Inc. secured a surface rail crossing and I have attached that document for your files.

In 1996, when Ocean State Steel was winding down, the surface crossing was preserved in order to preserve the economic development opportunity at the former Ocean State Steel site. I attach the 1996 document to that effect.

At this point, I have secured a Court-appointed buyer to redevelop the former Ocean State Steel site, which we refer to as East Pointe. The development would be a high-end mixed use development which will advance the goals established by the Rhode Island General Assembly in enacting the East Providence Waterfront Development District. As such, I am formally requesting that the Rhode Island Department of Transportation approve the reinstatement of the crossing in accord with the 1986 Railroad Operating Agreement, which I have also attached for your convenience.

It is my understanding that I must make a filing with the Rhode Island Public Utilities Commission in this regard. I am preparing that now.

However, I formally wanted to put you on notice that I am seeking reinstatement under the 1986 Railroad Operating Agreement and I would like to know as soon as possible if there is any

Case Number: PB-2009-5341
Filed in Providence/Bristol County Superior Court
Submitted: 8/18/2020 12:31 PM
Envelope: 2707896
Reviewer: Janna F.

Stephen A. Devine
Vera H. Querceto, Esquire
August 7, 2020
Page 2

objection to the reinstatement, so that I can report to Justice Brian Stern, who is presiding over the case and is my appointing Justice.

I realize fully that the ultimate approval would be subject to engineering review and safety improvements. However, I would need to know if the Rhode Island Department of Transportation has any objection to reinstating the crossing as it is a contingency to my sale and the economic development opportunity that is the subject to that sale.

Your assistance would be greatly appreciated.

Sincerely,



W. MARK RUSSO

WMR/was
Enclosures

Cc: The Honorable Brian Stern (via e-mail)
John A. Dorsey, Esq. (via e-mail)

FERRUCCI
RUSSO

Case Number: PB-2009-5341
Filed in Providence/Bristol County Superior Court
Submitted: 8/18/2020 12:31 PM
Envelope: 2707895
Reviewer: Janna F.

Wendy Smith

From: Diluglio, Vera (DOT) <vera.diluglio@dot.ri.gov>
Sent: Thursday, August 13, 2020 1:18 PM
To: Mark Russo
Cc: Stolzman, Rob; Devine, Stephen (DOT)
Subject: East Providence Omega RR Crossing

Mark, RIDOT has no objection to reinstatement of the surface railroad crossing at the site pursuant to that 1986 Railroad Operating Agreement as referenced in your correspondence of August 7, 2020. If you need anything further, do not hesitate to contact me. Thank you! Vera

Vera H. Querceto, Esquire
Chief Legal Counsel
Rhode Island Department of Transportation
2 Capitol Hill
Providence, RI 02903
Phone: (401) 563-4591
Fax: (401) 222-4226
e-mail: vera.diluglio@dot.ri.gov

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Exhibit C

CONSTRUCTION AND MAINTENANCE AGREEMENT

RR MILEPOST 4.84

CITY OF EAST PROVIDENCE, COUNTY OF PROVIDENCE, STATE OF RHODE ISLAND

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT (this "**Agreement**") made this day of _____ 2022 ("**Effective Date**"), by and between Noble Development LLC, ("**Developer**"), **Error! Unknown document property name.** ("**Railway**") and State of Rhode Island Department of Transportation ("**RI DOT**");

WITNESSETH:

WHEREAS the Developer is financing, designing, and constructing a residential development immediately adjacent to the Railway's operating corridor ("**Development**"); and

WHEREAS in the interest of railroad safety, public safety and aiding motor vehicle traffic, Developer proposes to finance a private railroad crossing ("**Private Crossing**") at Railway's Milepost 4.84, DOT # 861-537 N and Railroad Project # Northern Region: 21PWRZ01R, ("**Project**"); located in the City of East Providence, State of Rhode Island; and

WHEREAS, Developer is willing to undertake responsibility for one hundred percent (100%) of the costs of the Project as detailed in **Exhibit B**; and

WHEREAS, attached hereto and hereby made a part hereof as **Exhibit A** is a Project Print showing the type, size and location of the Project; and

WHEREAS, Railway is willing to coordinate and cooperate with Developer and RI DOT to permit construction of the Project upon the terms and conditions herein stated and not otherwise; and

WHEREAS, said Project shall be constructed in accordance with full plans and full designs which shall be subject to the mutual approval of Railway and RI DOT.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed as follows:

I. Performance of Work

Each party will perform various items of work as described below:

A. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY DEVELOPER OR ITS CONTRACTOR AT DEVELOPER EXPENSE.

1. Development Plans & Specifications and Construction

Except as otherwise herein provided, furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for construction of the Development.

2. Maintenance of Roadway Traffic
Bear responsibility for all roadway traffic detours, maintenance of roadway traffic, and all other roadway modifications, permanent or temporary, necessary for the Project.
3. Schedule & Notification
Provide Project construction schedule and notify Railway (a) fifteen (15) days prior to the date Railway is to provide flagging services and (b) twenty (20) days prior to date construction on the Project is to begin. Thereafter, Developer will implement the entire Project in accordance with the mutually agreed upon schedule, subject in all events to Force Majeure (as hereinafter defined).

B. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY RAILWAY OR ITS CONTRACTOR AT DEVELOPER EXPENSE.

1. Gates and Lights. As soon as commercially feasible, based upon availability of materials and labor, following Developer's acquisition of the property surrounding the Private Crossing (estimated to be on or around August 1, 2022), the installation of lights and gates customarily associated with the permanent Private Grade Crossing
2. Temporary Crossing
Take all necessary, reasonable steps for the reconstruction, if necessary of the Temporary Crossing (as hereinafter defined), including all track reconstruction, crossing surface, and active warning devices. Upon installation and connection of water and sewer lines to the foundation(s) of the first buildings in the Development for which access over the Permanent Crossing shall be provided over the Private Crossing , take all necessary, reasonable steps for the removal of the Temporary Crossing.
3. Private Crossing
Following the removal of the Temporary Crossing in #2 above, take all necessary, reasonable steps for the reconstruction of the Private Crossing, including all track reconstruction, crossing surface, and active warning devices.
4. Construction Engineering and Inspection.

Engineering services, including Development construction submittal reviews, project coordination, construction inspections, and preparation of invoices.
5. Flagging
Unless and until the light and gates associates with the Private Grade Crossing have been installed, Developer must engage an approved flagger by Railway to protect Railway's tracks at all times when the Temporary Crossing will be used for any reason. Notwithstanding the foregoing, the existence and operation of the lights and gates does not preclude nor supersede the procedures and protocols for the utilization of flagmen are more particularly set forth in Railway's Public Project Manual, April 2019 (the "Flagmen Requirements"), to which Developer agrees to adhere until such time as the Private Crossing has been installed. Any

flagging cost or protective services performed by Railway or its contractor shall be at Developer's expense.

C. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY RI DOT AT DEVELOPER EXPENSE.

D. COSTS AND PAYMENTS.

Railway's financial contribution to the total Project cost shall be **zero percent (0.0%)** of the total Project cost, or **zero dollars (\$0.00)** based upon the confirmed construction contract amount as set forth on **Exhibit B**. The total Project cost may be modified by amendment with the mutual consent of Developer, Railway and RI DOT. In the interest of clarity and to avoid ambiguity, the flagging and protective services provided by Railway pursuant to Section I. (B) above are included in the total Project cost.

Railway will invoice Developer on a monthly basis for one hundred percent (100%) of the costs incurred by Railway related to the Project in the preceding month. Upon completion of the Project, including the final inspection and correction of all punch-list items, Railway will provide a final invoice to Developer for one hundred percent (100%) of the unpaid costs incurred by Railway related to the Project. Developer shall pay each progress invoice and the final invoice within ninety (90) days after receipt of such invoice.

II. Construction Plans and Specifications

Developer or its contractors shall perform its work in accordance with detailed plans and specifications which shall be prepared by Developer or its contractors and submitted to Railway and RI DOT for approval of those sections that are applicable to Railway's operating corridor, facility or operations. No work pursuant to said plans and specifications shall be performed on the operating corridor of Railway prior to receipt of notices to proceed given by Railway to Developer. Nothing provided in this Agreement with respect to said plans and specifications shall be construed or deemed to be a ratification, endorsement or adoption by Railway of either or both said plans as its own.

III. Traffic Protection, Safety and Flagging

All work herein provided for, to be done by Developer or its contractors on Railway's operating corridor, shall be performed at such time and in such manner as not to interfere with the movement of trains or traffic upon the tracks of Railway. Developer or its contractors shall enter into a "**Right of Entry Agreement**" with Railway prior to the first entry onto Railway's operating corridor, such Right of Entry Agreement to be provided by Railway upon request. Developer or Developer's contractor shall reimburse Railway for one hundred percent (100%) of the actual costs related to flagging per Section I. (B) of this Agreement. Railway will submit bills for flagging and other protective services and devices during the progress of the work contemplated by this Agreement.

Wherever the safeguarding of trains or traffic of Railway is mentioned in this Agreement, it is intended to cover and include all users of Railway's tracks having permission for such use.

IV. Conditions, Restrictions, and Limitations

All the aforementioned rights are granted subject to the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions contained in this Agreement, including, without limitation, those set forth in the Right of Entry Agreement, Attachment 2 (Roadway Worker Protection Training Policy) and Attachment 3 (Contractor Safety Rules), each as attached hereto and by this reference incorporated herein; Developer and its contractors, in the exercise of the rights and in the conduct of the Project, shall and will do, keep, observe and perform each and all of the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions thereof.

Developer shall ensure that its contractor(s) obtain and provide to Railway evidence that such contractor(s) have procured the insurance coverages described in **Exhibit C**, hereto attached, covering their work on Railway's property in connection with the Project.

Developer agrees that at no time shall it file or permit the filing of a lien or liens upon the property of Railway or RI DOT related to the Project. If, at any time during the progress of the Project, at the time of acceptance of this Agreement or thereafter, any indebtedness due a subcontractor of Developer has become or may become a lien or liens upon said work, equipment or materials, Developer shall no later than thirty (30) days after receipt of written notice thereof from the Railway, pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond, or otherwise. In the case of its failure to do so with said thirty (30) day period, Railway may suspend the use of its property until such claim or indebtedness is paid or may apply such money toward the discharge thereof or assert and enforce a claim against Developer for such claim or indebtedness, , take possession and control of the Project and complete the same or cause the same to be completed in accordance with the terms and conditions hereof.

V. Temporary Crossing

Developer and Railway agree and acknowledge that a temporary construction crossing ("**Temporary Crossing**") already exists at the Project site as of the date hereof.

Once water and sewer lines have been installed and connected to the foundation of the first buildings in the Development for which access will be provided over the Crossing, Railway, upon Developer's written request, will remove the Temporary Crossing, leaving the aforementioned lights and gates in place, and construct the remainder of Private Grade Crossing as designed. Such removal shall be at the expense of Developer. Railway will be provided with a written notice that work is complete. The anticipated completion date is _____, 2023. The Temporary Crossing shall be gated and locked on both sides of the tracks at all times when not actively in use. Railway flagger will have the only key shall be exclusively responsible for the unlocking of the gates and locks. Unless and until the light and gates associates with the Private Grade Crossing have been installed, Developer must engage an approved flagger by Railway to protect Railway's tracks at all times when the Temporary Crossing will be used for any reason. Notwithstanding the foregoing, the existence and operation of the lights and gates does not preclude nor supersede the Flagmen Requirements. Railway agrees and acknowledges that Developer may amend or extend the dates set forth in this Section V upon no less than thirty (30) days prior written notice to Railway and DOT.

VI. Funding and Signatory Warranty

Developer acknowledges that, prior to commencement of the Development, it shall have available all funds necessary to complete the Project, including the reimbursement of Railway for the estimated costs, as set forth in the initial estimate (**Exhibit B**).

Each party to this Agreement certifies that its signatory has the authority to enter into this Agreement on its behalf.

VII. Term, Ownership, and Maintenance Responsibilities

The term of this Agreement commences on the Effective Date and shall continue until completion of the construction of the Project, as determined by Railway unless otherwise terminated as provided in this Agreement. Developer's and Railway's obligations under Sections X. and XI. (B) shall survive the term of this Agreement.

Upon completion of the Project, Developer, at Developer's expense, will be responsible for the future maintenance of the Project pursuant to that certain License Agreement for Private Grade Crossing dated _____, 2022 by and between Developer, Railway and RI DOT (the "**Private Crossing Agreement**").

VIII. Assignment

No party has the right to assign this Agreement without the consent of the others. Notwithstanding the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto, their successors and permitted assigns.

IX. Reserved

X. Indemnity

As a material inducement for entering into this Agreement, and without which Railway and RI DOT would not enter into the same, Developer covenants and agrees that:

- A. TO THE FULLEST EXTENT PERMITTED BY LAW, DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS RAILWAY, ITS PARENTS, AFFILIATES, SUBSIDIARIES, AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS AND EMPLOYEES OF EACH ("**RAILWAY INDEMNITEES**") AND RI DOT FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITIES OF EVERY KIND (INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS, AND OTHER EXPENSES RELATED THERETO) FOR INJURY TO OR DEATH OF A PERSON OR FOR LOSS OF OR DAMAGE TO ANY PROPERTY WHATSOEVER (INCLUDING BUT NOT LIMITED TO PROPERTY OWNED BY OR IN THE CARE, CUSTODY, OR CONTROL OF RAILWAY INDEMNITEES, RI DOT, DEVELOPER OR ITS DESIGNEES), ARISING OUT OF OR IN CONNECTION WITH ANY WORK DONE, ACTION TAKEN OR PERMITTED BY THE DEVELOPER, ITS CONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS AGREEMENT AND/OR IN ANY WAY ARISING UNDER OR RELATED TO THE PROJECT OR THIS AGREEMENT.

IT IS THE EXPRESS INTENTION OF THE PARTIES THAT THE INDEMNITY PROVIDED IN THIS SECTION, INDEMNIFIES RAILWAY INDEMNITEES AND RI DOT FOR THEIR OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS ACTIVE OR PASSIVE, OR IS THE SOLE OR A CONCURRING CAUSE OF ANY LOSS, INJURY, DEATH OR DAMAGE; PROVIDED THAT SAID INDEMNITY SHALL NOT PROTECT RAILWAY

INDEMNITEES OR RI DOT FROM LIABILITY FOR LOSS, INJURY, DEATH OR DAMAGE ARISING SOLELY OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILWAY INDEMNITEES. IT IS STIPULATED BY THE PARTIES THAT RAILWAY INDEMNITEES OWE NO DUTY TO DEVELOPER, ITS CLIENT, OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES TO PROVIDE A REASONABLY SAFEWORK PLACE AND THAT ALL PARTIES ENTERING ONTO RAILWAY PROPERTY DO SO AT THEIR SOLE RISK.

- B. Developer shall be responsible for all damages and expenses on account of injuries, (including death) to, and property damage of, any of its employees, agents, subcontractors or representatives while on the property of Railway and shall indemnify, defend and hold Railway Indemnitees and RI DOT harmless from all claims of damage or suits which may arise, except and only to the extent that such claims, losses, damages or expenses are caused by the gross negligence or willful misconduct of Railway Indemnitees.
- C. IN NO EVENT SHALL RAILWAY INDEMNITEES OR RI DOT BE LIABLE FOR ANY PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

XI. Cancellation of Project; Termination of Agreement: Remedies

- A. If Developer determines it is necessary to cancel the Project for any reason, Developer may terminate this Agreement by delivery of written notice to Railway and RI DOT. Upon receipt of such notice, Railway and RI DOT shall cease work.
- B. Developer shall reimburse Railway and RI DOT for (i) all reasonable costs and expenses incurred in returning Railway's and RI DOT's property to its original condition to the reasonable satisfaction of Railway or RI DOT, and (ii) any expenses incurred by Railway or RI DOT in connection with the Project up until the time of termination.
- C. Any delays in or failure of performance by any party under this Agreement will not constitute default or give rise to any claims for damages or penalties if the delay or failure is directly caused by a Force Majeure Event. A "**Force Majeure Event**" means any of the following and any other event, which are events, circumstances, or conditions beyond the reasonable control of the parties, including, without limitation, acts of God, riots, wars (whether declared or not), equipment malfunction, derailments, civil disturbances, civil disobedience, insurrections, acts of terrorism, sabotage, rockslides, landslides, snowslides, avalanches, earthquakes, explosions, floods, fire, underground damage, lightning, sustained abnormal weather conditions or other natural catastrophes and/or strikes, work slowdown, lockouts or other industrial disturbances, pandemics, epidemics, health emergencies, viruses (e.g. SARS Cov-2), disease (e.g. COVID-19), plague, changes in law or regulations, quarantine, travel restrictions, differing or unforeseeable site conditions, acts of governmental agencies or authorities (whether or not such acts are made in response to other Force Majeure Events), whether or not of a similar kind or nature to any of the foregoing. The parties agree that a Force Majeure Event does not include economic hardship, changes in market conditions, or insufficiency of funds. Under no circumstances shall an obligation to pay monies owed under this Agreement be delayed, deferred, postponed or excused by a Force Majeure Event.

XII. General Provisions

SOLE BENEFIT. This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than Railway Indemnitees, the parties' successors and permitted assigns, any right or benefit pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

WAIVER. Any waiver at any time by one party of a breach hereof by the other party will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Agreement or the right of either party hereto thereafter to avail itself of any rights under this Agreement with respect to a subsequent breach. No provision of this Agreement shall be waived by any act or knowledge of the parties hereto, but only by a written instrument signed by the party waiving a right hereunder.

SEVERABILITY. If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

MERGER. This Agreement and the exhibits attached hereto in conjunction with the Private Crossing Agreement, contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto, written or oral.

AMENDMENT. No provision of this Agreement shall be modified without the written concurrence of the parties hereto.

HEADINGS. The headings of the sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

NEGOTIATED TERMS. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the parties that its terms be not construed against any of the parties by reason of the fact that it was prepared by one of the parties.

GOVERNING LAW. This Agreement will be construed in accordance with the laws of the state where the Project is located.

COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

SURVIVAL. Developer's indemnity obligations shall survive the expiration or termination of this Agreement along with any other right or obligation that is, by its express terms or nature and context, intended to survive.

The following is a list of the attachments:

- Exhibit A – Project and Development Plan Set
- Exhibit B – Rail Services Cost Estimate
- Exhibit C – Insurance Requirements

- Attachment 1 – G&W Code of Ethics and Conduct
- Attachment 2 – Roadway Worker Protection Training Policy
- Attachment 3 – Contractor Safety Rules

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year hereinafter written.

WITNESS:

Developer: Noble Development, LLC

Authorized Representative Signature

Authorized Representative (print) / Title

WITNESS:

**Railway: Providence and Worcester
Railroad Company**

Authorized Representative Signature

Authorized Representative (print) / Title

WITNESS:

**RI DOT: State of Rhode Island
Department of Transportation**

Authorized Representative Signature

Authorized Representative (print) / Title

RE Contract: _____

RR Project # 21PW201R

DOT PID#: N/A

Exhibit A
Project Print

RE Contract: _____

RR Project #: 21PWRZ01R

DOT PID#: [N/A]

Exhibit B
Rail Services Cost Estimate

Exhibit C

Insurance Requirements

The coverages and limits required hereunder shall include the liability assumed by the named insured under the indemnification provisions contained in the Agreement between the Developer and Railway covering work to be performed upon or adjacent to Railway's property at **Mile Post 4.84**:

The following coverages are material requirements of this Agreement. Such coverages shall not limit Developer's obligation to indemnify, defend and hold Railway Indemnitees harmless:

(a) Developer shall, at its own cost and expense, prior to entry onto the property of Railway (the "Property") or the commencement of any work pursuant to this Agreement, procure and thereafter maintain throughout the term of this Agreement the following types and minimum amounts of insurance:

- (i) Public Liability or Commercial General Liability Insurance ("CGL") including Contractual Liability Coverage and CG 24 17 "Contractual Liability-Railroads" endorsement, covering all liabilities assumed by Developer under this Agreement, without exception or restriction of any kind, with a combined single limit of no less than two million dollars (\$2,000,000) for bodily injury and/or property damage liability per occurrence, and an aggregate limit of no less than six million dollars (\$6,000,000) per annual policy period. Such insurance policy shall be endorsed to provide a Waiver of Subrogation in favor of Railway Indemnitees and shall name Railway Indemnitees as Additional Insureds. An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section but must "follow form" and afford no less coverage than the primary policy.
- (ii) Developer shall maintain Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and/or property damage liability per occurrence. Such insurance policy shall be endorsed to provide a waiver of subrogation in favor of Railway Indemnitees and shall name Railway Indemnitees as Additional Insureds.
- (iii) Developer shall maintain Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of no less than one million dollars (\$1,000,000) for bodily injury by accident, each accident; one million dollars (\$1,000,000) for bodily injury by disease, policy limit; one million dollars (\$1,000,000) for bodily injury by disease, each employee. Such insurance policy shall be endorsed to provide a waiver of subrogation in favor of Railway Indemnitees.
- (iv) Prior to construction within fifty (50) feet of the Railway's tracks, Developer shall purchase Railroad Protective Liability Insurance naming Railway Indemnitees as the named insureds with limits of two million dollars (\$2,000,000) each occurrence and six million dollars (\$6,000,000) aggregate limit. The policy shall be issued on a standard ISO form CG 00 35 12 03. This policy may be available from Railway.

(b) The following general insurance requirements shall apply:

- (i) The specified insurance policies must be affected under standard form policies underwritten by insurers licensed in the state where the Project is located and carry a minimum Best's rating of "A-" and size "Class VII" or better. Railway reserves the right to reject as inadequate any insurance coverage provided by an insurer that is rated less than the ratings specified in this section.
- (ii) All coverages shall be primary and non-contributory to any insurance coverages maintained by Railway Indemnitees.
- (iii) All insurance policies shall be endorsed to provide Railway with thirty (30) days

- prior written notice of cancellation, non-renewal or material changes.
- (iv) Developer shall provide Railway with certificates of insurance evidencing the insurance coverages, terms and conditions required prior to commencement of any activities on or about the Property. Said certificates should reference this Agreement by date and description and shall be furnished to Railway at the following address, or to such other address as Railway may hereafter specify:

Providence and Worcester Railroad Company
Attn: Real Estate Department
13901 Sutton Park Drive South
Suite 270
Jacksonville, FL 32224

Electronic Copy To:

legalnotices@gwrr.com

- (v) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:
- a. The retroactive date shall be prior to the commencement of work.
 - b. Developer shall maintain such policies on a continuous basis.
 - c. If there is a change in insurer or policies are cancelled or not renewed, Developer shall purchase an extended reporting period of not less than three (3) years after the Agreement expiration or termination date.
 - d. Developer shall arrange for adequate time for reporting of any loss under this Agreement.

(c) Railway may require Developer to purchase additional insurance if Railway reasonably determines that the amount of insurance then being maintained by Developer is insufficient in light of all relevant factors. If Developer is required to purchase additional insurance, Railway will notify Developer. Failure of Developer to comply within thirty (30) days shall be considered a material default subject to termination of the Agreement.

d. Furnishing of insurance by Developer shall not limit Developer's liability under this Agreement but shall be additional security therefor.

e. The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

f. Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at Developer's sole risk

g. If contractors are utilized by Developer, Developer agrees to require all such contractors to comply with the insurance requirements of this Exhibit C.

Developer shall keep said insurance in full force and effect until all work to be performed upon or

RE Contract: _____

RR Project #. 21PWRZ01R

DOT PID#: [N/A]

adjacent to the Property under this Agreement is completed to the satisfaction of and accepted by Railway and thereafter until Developer has fulfilled the provisions of this Agreement with respect to the removal of tools, equipment and materials from the Property.

Attachment 1

GW CODE OF ETHICS AND CONDUCT

GW Code of Ethics and Conduct: This document is located online at

Error! Hyperlink reference not valid.

I certify that I have reviewed and understand the GW Code of Ethics and Conduct and agree to abide by this Code for the duration of this Agreement

Noble Development LLC

Signature

Printed Name, Title

Date

Attachment 2

ROADWAY WORKER PROTECTION TRAINING POLICY

Railway and Developer have a mutual interest in providing a safe workplace for the employees of both parties and in maintaining the integrity and security of Railway's facilities and property (the "Property"). To help ensure this goal, Railway has instituted a training program for all employees of Developer or its contractor(s) seeking admission to the Property (the "Program"). These employees must successfully complete the Program. Developer shall cause its employees, and shall cause its contractor to require its employees, to successfully complete the Program on an annual basis, at their sole cost and expense, prior to admission onto the Property. The Program will be available on-line and administered by a third party on behalf of Railway. The cost per employee certification attempt is \$75.00 USD, payable via credit or purchasing card.

To access the Program, please follow these instructions:

- Start at website www.rrtrainers.com
- Click on the "Enter On-Line University" button
- Select the G&W course by clicking on the course name
- On the right-hand side of the page select "New User Registration"
- Fill out all of the fields on the registration page and submit
- A username and password will be provided via email
- After receiving the username and password go back to the On-Line University page and select the G&W course again
- Complete the registration process and training

All employees of Developer and its contractor(s) will be required to submit a copy of their training certification to the Railway personnel managing the applicable project.

RE Contract: _____

RR Project # 21PWRZ01R

DOT PID#: [N/A]

Attachment 3
Contractor Safety Rules

Exhibit D

LICENSE AGREEMENT FOR PRIVATE GRADE CROSSING

This Agreement (the "Agreement") is made this _____ day of _____ 2022 (the "Effective Date") by and between **Providence & Worcester Railroad Company** ("LICENSOR"), whose address is C/O Genesee & Wyoming Railroad Services, Inc., 13901 Sutton Park Drive South, Suite 270, Jacksonville, Florida 32224, **State of Rhode Island Department of Transportation** ("RI DOT"), whose address is 2 Capitol Hill, Providence, Rhode Island 02903, and **NOBLE DEVELOPMENT LLC** ("LICENSEE"), whose address is 10 Greene Street, Providence, Rhode Island 02903.

WHEREAS LICENSOR conveyed to RI DOT by Deed dated October 3, 1986 (Book 643 / Page 74) (the "Deed") LICENSOR'S right, title, and interest in and to certain real property, and interests in real property, together with all improvements and tangible property thereon located in City of East Providence, Rhode Island and City of Pawtucket, Rhode Island; and

WHEREAS LICENSOR, pursuant to the Deed and a Railroad Operating Easement dated October 3, 1986 (Book 643 / Page 81) reserved unto itself and its successors and assigns, an easement to conduct railroad operations over said line of railroad which shall be exclusive with respect to rail freight service; and

WHEREAS, LICENSOR, RI DOT and LICENSEE have entered into that certain Construction and Maintenance Agreement dated *****, 2022, (the "C&M Agreement") which details the parties' respective responsibilities related to the initial construction and financing of a temporary construction crossing (the "Temporary Crossing") and a subsequent private grade crossing (the "Private Grade Crossing") across LICENSOR'S rail line as specifically described herein and shown on Exhibit A attached hereto and incorporated herein (the Temporary Crossing and the Private Grade Crossing are collectively referred to as the "Crossing"); and

WHEREAS, for valuable consideration as outlined herein, the receipt of which is hereby acknowledged, LICENSOR and RI DOT desire to grant to LICENSEE a license to use and maintain the Crossing; and

WHEREAS, the parties have reached accord concerning the terms and conditions for LICENSEE'S non-exclusive use of the Crossing and desire to reduce them to writing.

NOW, therefore, for and in consideration of the premises and mutual covenants and agreements contained herein, the parties agree as follows:

1. CROSSING

LICENSOR hereby grants to LICENSEE, insofar as it has the legal right and its present title hereby permits, the non-exclusive right to use the Crossing, over the rail line of the LICENSOR at Mile Post 4.84, EAST PROVIDENCE RTrack Subdivision, City of EAST PROVIDENCE, County of PROVIDENCE, State of Rhode Island. The Crossing shall be located in exact accordance with Exhibit A and no departure shall at any time be made therefrom except upon receipt of prior written approval of LICENSOR.

The non-exclusive license includes the necessary appurtenances and other related fixtures, equipment, marker posts, drainage facilities or electric power for signals & cross arm, if any ("LICENSEE'S Facilities"), as shown on Exhibit A. LICENSEE'S Facilities are subordinated to all matters of record.

LICENSOR reserves the right to use the area four (4) feet below ground level of LICENSEE'S Facilities and to enter LICENSEE'S Facilities for construction and maintenance of LICENSOR'S rail line.

LICENSEE agrees that the continued use of the Crossing as provided herein shall be subject to LICENSEE'S compliance with the terms and conditions of this Agreement and the C&M Agreement. Upon default by LICENSEE (beyond the thirty (30) day notice and cure period more particularly set forth in Section 3 below), LICENSOR may, in its sole discretion, terminate this Agreement and order the removal of the Crossing.

2. PRIVATE USE

The use of the Crossing shall be private, and no other use shall be made by anyone under, across, upon and/or over the Crossing herein described without obtaining the prior written permission of LICENSOR, except by LICENSEE, its officers, employees and agents, residents and invitees of LICENSEE's proposed development, and other persons having business or visiting with LICENSEE. LICENSOR shall at all times have uninterrupted access to operate its rail line over the Crossing. No lease, assignment of any type, transfer, or conveyance of real property is intended by this Agreement.

3. PAYMENT, FEE, MAINTENANCE FEES AND TAXES

The use of the Crossing is granted contingent upon payment to LICENSOR of **\$ 2100.00 per year** as the minimum annual fee ("Annual Fee"). LICENSEE shall have no right of refund for any cause whatsoever in regard to Annual Fee payments paid to LICENSOR, which amount shall be payable on an annual basis, and due in advance no later than each anniversary of the Effective Date.

LICENSEE shall pay LICENSOR a base annual fee of **\$ 5,000.00 per year** as a minimum signal maintenance fee ("Signal Maintenance Fee"). LICENSEE shall have no right of refund for any cause whatsoever with respect to Signal Maintenance Fee payments paid to LICENSOR, which said sum shall be payable annually in advance commencing on the Effective Date and each anniversary of the Effective Date thereafter.

All future maintenance, repair and/or reconstruction of the Crossing surface shall be performed by LICENSOR, at the sole cost of the LICENSEE, on an as-needed basis as determined by LICENSOR.

LICENSOR reserves the right to adjust the Annual Fee and the Signal Maintenance Fee on each anniversary date of this Agreement, or at such other times as conditions warrant, but in no event more than once per calendar year and in no event shall either such increase exceed five percent (5%) of the fee assessed for the immediately preceding year. Billing or acceptance by LICENSOR of any Annual Fee or Signal Maintenance Fee shall not imply a definite term or otherwise restrict either party from canceling this Agreement as herein provided.

At no time shall the Annual Fee or the Signal Maintenance Fee be less than those fees payable as of the Effective Date of this Agreement.

LICENSEE, shall assume and pay any and all taxes and assessments which may be levied upon the LICENSEE'S Facilities, and LICENSEE shall indemnify, defend, and hold LICENSOR, ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THE RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS AND EMPLOYEES OF EACH (HEREINAFTER COLLECTIVELY "LICENSOR INDEMNITEES") and RI DOT harmless therefrom.

This Agreement shall continue in force indefinitely from and after the Effective Date, subject, however, to the right of LICENSOR to terminate this Agreement at any time, upon the giving LICENSEE no less than thirty (30) days prior written notice of the occurrence of either of the following: (i) a default by LICENSEE under this Agreement, which default has not been cured upon the expiration of said thirty (30) day notice period (or, if such default cannot be cured within said thirty (30) day period, LICENSEE has commenced the requisite curative effort within such thirty (30) day period and continues to pursue same in good faith through completion), or (ii) LICENSOR determines in good faith and its reasonable judgment, that the operational safety of the railroad necessitates such termination. Notwithstanding the foregoing, LICENSOR may temporarily suspend use of the Crossing in the event of an emergency posing an immediate threat to public safety or the operational safety of the railroad. Such temporary suspension shall be effective immediately upon notice to LICENSEE and shall continue until the emergency has abated. Additionally, this Agreement shall automatically terminate upon the removal of LICENSEE'S Facilities.

Within thirty (30) days from the date of the termination notice, LICENSEE agrees at its own risk and expense to remove LICENSEE'S Facilities, or such portion thereof as LICENSOR shall require removed, and to restore the Crossing to a neat and safe condition as LICENSOR shall require and, in a condition satisfactory to LICENSOR. If LICENSEE shall fail to do so within said time, LICENSOR shall have the right, but not the duty, to remove and restore the same, at the risk and expense of LICENSEE. Said restoration shall include, but not be limited to, any and all harm, damage or injury done to LICENSOR'S property and/or to any other public or private property by acts or occurrences subject to Federal, State or local environmental enforcement or regulatory jurisdiction, and shall include necessary and appropriate testing and cleanup.

Upon termination of this Agreement and use of the Crossing for any reason, all structures and alterations shall be removed from LICENSOR'S rail line and said property shall be returned to a physically and environmentally whole condition to the satisfaction of LICENSOR'S designated officer or representative, all at the sole cost and expense of LICENSEE. LICENSOR may, at LICENSOR'S sole discretion, during the removal of LICENSEE'S Facilities, require LICENSEE to conduct an environmental appraisal and report of the property formerly occupied by LICENSEE'S Facilities. All reports shall be prepared by a LICENSOR approved environmental consultant, to determine if any property has been environmentally impacted by Licensee's use of the Crossing. All environmental reports, which are prepared subject to this clause, shall be immediately available to LICENSOR and RI DOT by LICENSEE, if so requested. This clause shall survive termination of this Agreement.

This Agreement and the rights granted herein may not be transferred, assigned or sublet to another party not a signatory hereto without the prior written approval of LICENSOR and RI DOT. Upon approval by LICENSOR, LICENSEE shall satisfy any applicable transfer of rights or assignment fees in effect at that time.

4. CONSTRUCTION

All materials and construction work required to construct, install or establish the Crossing and LICENSEE'S Facilities shall be furnished and performed by LICENSOR or its contractor at the sole risk, cost and expense of LICENSEE pursuant to the C&M Agreement.

LICENSOR and LICENSEE agree and acknowledge that the Temporary Crossing is currently installed as of the Effective Date. As soon as commercially feasible, based upon availability of materials and labor,

following LICENSEE'S acquisition of the property surrounding the Crossing (estimated to be on or around August 1, 2022), LICENSOR shall install lights and gates customarily associated with the permanent Private Grade Crossing. LICENSEE shall provide LICENSOR with thirty (30) days' prior written notice of any planned work that will require the use of the Temporary Crossing. Once water and sewer lines have been installed and connected to the foundation of the first buildings in LICENSEE'S residential development for which access will be provided over the Crossing, LICENSOR, upon LICENSEE'S written request, will remove the Temporary Crossing, leaving the aforementioned lights and gates in place, and construct the remainder of Private Grade Crossing as designed. The removal of the Temporary Crossing shall be at the expense of LICENSEE. LICENSEE shall provide LICENSOR with a written notice that the water and sewer lines have been so installed on that portion of LICENSEE'S residential development. The anticipated completion date of the installation of said water and sewer lines is estimated to occur on or about May 15, 2023. Notwithstanding the forgoing and for the avoidance of doubt, the existence and operation of the lights and gates does not preclude nor supersede the Flagmen Requirements as defined in Section 7 below.

If required by LICENSOR, LICENSEE at its sole cost and expense, shall, upon completion of the construction and installation of the Crossing and LICENSEE'S Facilities, furnish LICENSOR with a **survey drawing**, showing the final exact location of the Crossing and LICENSEE'S Facilities as constructed. The survey drawing shall indicate LICENSOR'S survey valuation station which said installation is located, and/or the position of LICENSEE'S Facilities in relation to the center line of the track and/or the centerline of the closest public street crossing said track(s). Said survey drawing shall be attached to this Agreement as Exhibit B and made a part hereof.

LICENSEE'S Facilities shall be installed and maintained to the satisfaction and approval of LICENSOR'S engineer and all costs of LICENSOR'S engineer and other technicians, or professional consultants as may be required from time to time shall be borne by LICENSEE.

In the event LICENSEE shall at any time desire to make changes in the physical or operational characteristics of the Crossing or LICENSEE'S Facilities ("Crossing Modifications"), LICENSEE shall first secure in writing, LICENSOR'S consent, and approval of the proposed Crossing Modifications. LICENSOR'S consent and approval of any Crossing Modifications shall be contingent upon LICENSEE'S execution of LICENSOR'S standard Contractor Right of Entry Agreement. LICENSEE agrees that all Crossing Modifications shall be made at LICENSEE'S sole risk, cost, and expense and subject to all the terms, covenants conditions and limitations of this Agreement.

Prior to beginning any Crossing Modifications, LICENSEE shall pay LICENSOR a one-time engineering observation fee of \$ **1,750.00** and a contractor right of entry fee of \$ **1,750.00**.

LICENSEE hereby agrees to reimburse LICENSOR for any and all expenses LICENSOR may incur or be subjected to, or in consequence of, the planning, negotiation, installation, construction, location, changing, alteration, relocation, operation or renewal of the Crossing, LICENSEE'S Facilities, and any Crossing Modifications within thirty (30) days after receipt of LICENSOR'S invoice for payment.

5. MAINTENANCE

LICENSEE shall at all times keep the Crossing and the flangeways in the Crossing free and clear of dirt, ice, snow, and debris, and shall in any event promptly, upon notice from LICENSOR, perform the above work ("Ordinary Course Maintenance Work"). LICENSOR, for the purpose of protecting and

safeguarding its property, traffic, employees, and patrons, may at any time, with or without prior notice to LICENSEE, perform Ordinary Course Maintenance Work on the Crossing and the flangeways in the Crossing and thereafter, bill LICENSEE for all such costs and expenses incurred by LICENSOR. LICENSEE shall be solely responsible for the cost of any delay in the movement of trains resulting from LICENSEE'S failure to perform the Ordinary Course Maintenance Work and shall promptly pay any invoices rendered by LICENSOR for such costs.

LICENSEE when performing any Ordinary Course Maintenance Work shall be responsible to ensure that persons, equipment, and materials are kept a safe distance away from the tracks on the approach and any moving equipment on the tracks.

LICENSEE shall also be responsible for maintaining the structural integrity of the Crossing and the flangeways, including but not limited to the condition of the asphalt at the Crossing and any gravel for grading purposes ("Structural Maintenance Work"), provided, that any Structural Maintenance Work requires the prior written consent of LICENSOR. LICENSOR reserves the right to perform the Structural Maintenance Work in its sole discretion at LICENSEE'S sole cost and expense in the event LICENSEE does not commence the requisite Structural Maintenance Work within thirty (30) days after written notice thereof.

All Structural Maintenance Work requires LICENSOR'S prior consent, which may be requested from LICENSOR'S Representative (Brian Cutler at (508) 922-1740, or his designee), at least ninety (90) days prior to the proposed commencement of the Structural Maintenance Work.

The Crossing shall include adequate drainage facilities necessary or appropriate for the prevention of ponding and/or flooding or any other kind of water damage in the general area where the Crossing is located. Said drainage facilities shall be installed, if necessary, and maintained by LICENSEE at its sole risk, cost and expense.

LICENSEE agrees that any installation, maintenance, renewal, or removal obligations of LICENSEE referenced in this Agreement, covers only the requirements and/or specifications of installation, maintenance, renewal, or removal. Any such reference shall not be construed as LICENSOR'S permission or authority for LICENSEE to enter LICENSOR'S property without first executing LICENSOR'S Contractor Right of Entry Agreement, and fulfilling the requirements contained therein.

6. MAINTENANCE OF RIGHT OF WAY

In the event LICENSOR shall be required, or if LICENSOR determines in good faith and its reasonable judgment, that the operational safety of the railroad necessitates changes to the grade or location of any of its tracks or facilities, or to remove, construct or add to any of its tracks or facilities, then LICENSOR shall, at the sole cost and expense of LICENSEE, make such adjustments or relocations in the Crossing and LICENSEE'S Facilities and bill LICENSEE for such costs and expenses in accordance with Section 8 of this Agreement. In the event any of the work provided for in this section requires the adjustment or relocation of LICENSEE'S Facilities not located on LICENSOR'S property, then LICENSEE shall, at its sole cost and expense, promptly make all required adjustments and relocations to LICENSEE'S Facilities so affected.

LICENSOR shall have the paramount right at all times to use its track(s), right-of-way, and property at the Crossing. LICENSEE shall exercise the greatest care in the use of the Crossing and shall require all

others permitted under Section 2 hereunder to use the Crossing to also exercise the greatest care in the use of the Crossing and yield at all times to trains operating over it.

7. CROSSING PROTECTION

Sole responsibility for protecting the Crossing from the standpoint of safety and policing the Crossing shall rest exclusively on LICENSEE at all times and under all circumstances. LICENSEE shall erect, maintain, and renew appropriate signs, or notices, satisfactory to LICENSOR setting forth the fact that the Crossing is private and shall take whatever further steps as deemed necessary to prevent unauthorized persons from entering upon or using the Crossing for any purposes whatsoever.

LICENSOR may at any time install, maintain and renew railroad – highway grade crossing signs, and LICENSEE shall pay all costs and expenses of the installation, maintenance and renewal thereof in accordance with the terms of Section 8 of this Agreement.

The Temporary Crossing shall be gated and locked on both sides of the tracks at all times when not actively in use with appropriate locking gates installed and maintained by LICENSOR at the sole risk, cost and expense of LICENSEE. LICENSOR'S flagger will have the only key and shall be exclusively responsible for the unlocking of the gates. Unless and until the light and gates associates with the Private Grade Crossing have been installed, LICENSEE must engage an approved flagger by LICENSOR to protect LICENSOR'S tracks at all times when the Temporary Crossing will be used for any reason. Notwithstanding the foregoing, the existence and operation of the lights and gates does not preclude nor supersede the Flagmen Requirements as defined below in this Section.

LICENSEE shall erect and maintain, at LICENSEE'S sole cost and expense, a security fence on both sides of LICENSOR'S operating railroad corridor on property owned by LICENSEE from Bourne Avenue on the north to railroad bridge on the south as depicted in Exhibit D. The security fence shall be eight (8) feet high with maximum openings of two (2) inches by two (2) inches and shall include anti-climb shields or be curved to prevent persons from climbing over the security fence. LICENSEE assumes all liability and responsibility with respect to fences, railings and guard rails, or the absence thereof.

The Private Grade Crossing shall include automatic warning devices at the Crossing, said automatic warning devices shall be installed, maintained, and ultimately removed by LICENSOR at the sole cost and expense of LICENSEE.

In addition to the foregoing, but not in limitation thereof, if at any time during the course of LICENSEE'S construction of the proposed residential development, LICENSOR should deem crossing flagmen or watchmen desirable or necessary to properly protect its operation near the Crossing, LICENSOR may place flagmen or watchmen at the Crossing and bill LICENSEE for all costs and expenses incurred in placing such flagmen or watchmen. The furnishing or failure to furnish flagmen or watchmen by LICENSOR shall not release LICENSEE from any and all other liabilities assumed by LICENSEE under this Agreement. LICENSEE agrees and acknowledges that the procedures and protocols for the utilization of flagmen are more particularly set forth in LICENSOR'S Public Project Manual, April 2019, the applicable provisions of which are attached hereto as Exhibit E (the "Flagmen Requirements") and LICENSEE agrees to adhere to the Flagmen Requirements at the Crossing for the duration of the construction of the proposed development.

8. BILLING

All costs and expenses in connection with the construction, adjustment, alteration, relocation and removal of the Crossing, with the exception of those costs and expenses incurred by LICENSOR in accordance with the provisions of Section 6 hereof, shall be borne by LICENSEE, and in the event of work being performed or material furnished by LICENSOR under the stipulated right to perform such work of construction, adjustment, alteration, relocation or removal under any section here of, LICENSEE shall pay LICENSOR the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related materials management expenses and the actual cost of labor plus the current applicable overhead percentage as developed and published by the Accounting Department of Railroad for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes and all other direct expenses. The aforementioned material and labor overhead charges shall be applied at rate which is effective at the time of the performance of any work by LICENSOR on the Crossing. LICENSEE shall pay all bills rendered pursuant to this Agreement within thirty (30) days of presentation by LICENSOR.

9. LIABILITY

NEITHER LICENSOR INDEMNITEES nor RI DOT shall be responsible for any damage to the Crossing at any time while this Agreement is in effect. In addition, LICENSEE and all others permitted hereunder to use the Crossing expressly assume all risks of personal injury, including death, or property damage, including without limitation from the following causes, all of which LICENSEE and others permitted hereunder to use the Crossing are aware constitute actual potential hazards to any person present on or near the Crossing and/or the LICENSOR'S property: (a) being struck by a locomotive, freight car, motor vehicle or any of LICENSOR'S equipment; (b) slipping and falling from moving or stationary locomotives, cabooses, freight cars or any of LICENSOR'S equipment; (c) slipping and falling because of poor footing conditions; (d) being struck by falling or flying objects; (e) being injured as a result of defectively used, manufactured or maintained rolling stock or any of the LICENSOR'S equipment. LICENSEE shall inform all others permitted hereunder to use the Crossing that such users assume the aforementioned risks.

LICENSEE HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR INDEMNITEES AND RI DOT FROM ANY AND ALL ACTIONS AT LAW, CLAIMS, DEMANDS, LOSSES, DAMAGES, SUITS, FINES, PENALTIES AND LIABILITIES (COLLECTIVELY, THE "INDEMNIFICATION EXPENSE") OF EVERY KIND, FOR DEATH, BODILY INJURY, PERSONAL INJURY OR PROPERTY DAMAGE, ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RESULTING FROM LICENSEE'S ACTIVITIES PERMITTED HEREUNDER, INCLUDING BUT NOT LIMITED TO ITS USE OF THE CROSSING OR LICENSEE'S FACILITIES AND THE EXISTENCE OF LICENSEE'S FACILITIES BY LICENSEE, ITS PERMITTEES, INVITEES OR ANY OTHER PERSON REGARDLESS OF ANY ORDINARY NEGLIGENCE ON THE PART OF LICENSOR INDEMNITEES. THE INDEMNITIES PROVIDED IN THIS AGREEMENT ARE SPECIFICALLY MEANT TO INCLUDE INDEMNITY OF LICENSOR INDEMNITEES FOR THEIR OWN ORDINARY NEGLIGENCE, EVEN IF THE INJURY OR DAMAGE IS CAUSED ENTIRELY BY THE ORDINARY NEGLIGENCE OF LICENSOR INDEMNITEES AND THERE IS NO NEGLIGENCE ON THE PART OF LICENSEE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE INDEMNITY CONTAINED HEREIN DOES NOT AND SHALL NOT EXTEND TO ANY INDEMNIFICATION EXPENSES ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LICENSOR INDEMNITEES AND RI DOT.

THE PARTIES ACKNOWLEDGE THAT THE USE OF LICENSOR'S PREMISES IS FOR THE SOLE CONVENIENCE OF LICENSEE AND THAT LICENSOR INDEMNITEES SHALL HAVE NO DUTY TO LICENSEE, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR INVITEES TO PROVIDE A REASONABLY SAFE PLACE IN WHICH TO WORK, TO PROVIDE ADEQUATE OR SAFE METHODS AND EQUIPMENT FOR THEIR WORK OR TO INSPECT OR MAINTAIN LICENSEE'S FACILITIES FOR SAID SAFE METHODS AND WORK EQUIPMENT NOR TO GIVE ANY WARNINGS OR OTHER NOTICES TO LICENSEE'S EMPLOYEES OR INVITEES REGARDING SAFETY EITHER OF LICENSEE'S FACILITIES AND RELATED WORKPLACE OR LICENSOR'S PROXIMATE RAILROAD OPERATIONS AND THAT ALL SUCH DUTIES SHALL BE ASSUMED BY LICENSEE WHO FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR INDEMNITEES AND RI DOT FROM ANY AND ALL CLAIMS ALLEGING ANY FAILURE TO PERFORM SAID DUTIES. LICENSEE'S INDEMNITY OBLIGATIONS OF THIS SECTION 9 SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS AVAILABLE UNDER WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

WITHOUT PREJUDICE TO LICENSOR INDEMNITEES' LIMIT OF LIABILITY ABOVE, IN NO EVENT SHALL LICENSOR INDEMNITEES BE LIABLE TO LICENSEE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO COST OF CAPITAL, DECLINE IN MARKET VALUE, BUSINESS INTERRUPTION EXPENSES, ATTORNEYS' FEES AND LOST SALES) OF ANY KIND ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER LICENSOR INDEMNITEES KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

10. INSURANCE

LICENSEE, at its expense, shall obtain the insurance described in Exhibit C attached hereto and made a part hereof prior to the commencement of any work which is the subject of this Agreement.

11. GENERAL

This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective officers, shareholders, agents, employees, parent corporation, subsidiaries, affiliates, successors, and permitted assigns, including but not limited to owners and occupants of the proposed development, any right or benefit pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

Any waiver at any time by one party of a breach hereof by the other party will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Agreement or the right of either party hereto thereafter to avail itself of any rights under this Agreement with respect to a subsequent breach. No provision of this Agreement shall be waived by any act or knowledge of the parties hereto, but only by a written instrument signed by the party waiving a right hereunder.

No provision of this Agreement shall be modified without the written concurrence of the parties hereto. This Agreement includes exhibits appended hereto and represents the entire understanding of the parties hereto, and to that extent supersedes any prior understandings, written or oral.

The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the Parties that its terms not be construed against any of the Parties by reason of the fact that it was prepared by one of the Parties.

This Agreement will be construed in accordance with the laws of the state of Rhode Island.

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

The parties shall not disclose the terms of this Agreement to a third party (a) other than as required by law so long as such party required to disclose the terms of this Agreement under applicable law provides the other party with prior written notice of such requirement, or (b) as otherwise agreed in writing between the parties. Notwithstanding the foregoing, the parties may disclose the terms and conditions of the Agreement to (1) a parent, subsidiary, or affiliated company; or (2) to their lawyers and consultants, including but not limited to its auditors, provided that all such parties agree to maintain the confidentiality of such information in accordance with the terms of this provision. If any party violates this paragraph, any adversely affected party may cancel this Agreement without penalty and exercise any available remedies under applicable law.

12. ADDITIONAL LICENSE CONDITIONS

As additional consideration for the grant of this license, LICENSEE agrees to the following conditions:

- a. LICENSOR shall not be required to erect or maintain any noise or vibration abatement/reduction or sound reduction structures for the benefit of LICENSEE or any tenant, invitee or successor of LICENSEE. LICENSOR shall not be liable for or required to pay any part of the cost or expense of erecting or maintaining any noise or vibration abatement/reduction or sound reduction structures or any part hereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any noise or vibration abatement/reduction or sound reduction structures. LICENSEE assumes all liability and responsibility respecting noise and vibration abatement reduction and sound reduction structures.
- b. LICENSEE shall include a clause in every property sale or lease agreement for its project advising buyers and/or tenants that it is dangerous and illegal to trespass on any railroad property and that they must not cross any railroad tracks except at designated road and/or pedestrian crossings. LICENSEE shall provide LICENSOR with the opportunity to review and approve the proposed clause.
- c. The location of LICENSEE's development is within 100 feet of an active Railroad operating corridor. The Railroad operates at this location 7 days a week, 24 hours a day 365 days a year. LICENSEE shall include a clause in every property sale or lease agreement for its project advising their buyers and/or tenants that they will be in close proximity to an active rail corridor and yard that operates at all times, and which generates noise, vibrations and odors among other nuisances

and inconveniences. LICENSEE shall provide LICENSOR with the opportunity to review and approve the proposed clause.

- d. Developer / LICENSEE / Buyer and Tenant Acknowledgement and Disclaimer – LICENSEE shall require all buyers and tenants of LICENSEE’s development to execute an acknowledgement of, and a waiver of claims related to, the potential risk of physical harm and property damage and the likelihood of noise, vibrations, odors and other nuisances and inconveniences, including, without limitation, reduction in use, enjoyment and value.

This Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

(Signature Page Follows)

THIS AGREEMENT IS hereby declared to be binding upon the parties hereto.

IN WITNESS WHEREOF, the undersigned have hereunto agreed to the terms above this _____
day of _____, 2022.

WITNESS

LICENSOR:
Providence & Worcester Railroad Company

By: _____

Its: _____

Signed: _____

WITNESS

LICENSEE:
NOBLE DEVELOPMENT LLC

By: _____

Its: _____

Signed: _____

WITNESS

RI DOT:
State of Rhode Island Department of Transportation

By: _____

Its: _____

Signed: _____

EXHIBIT A

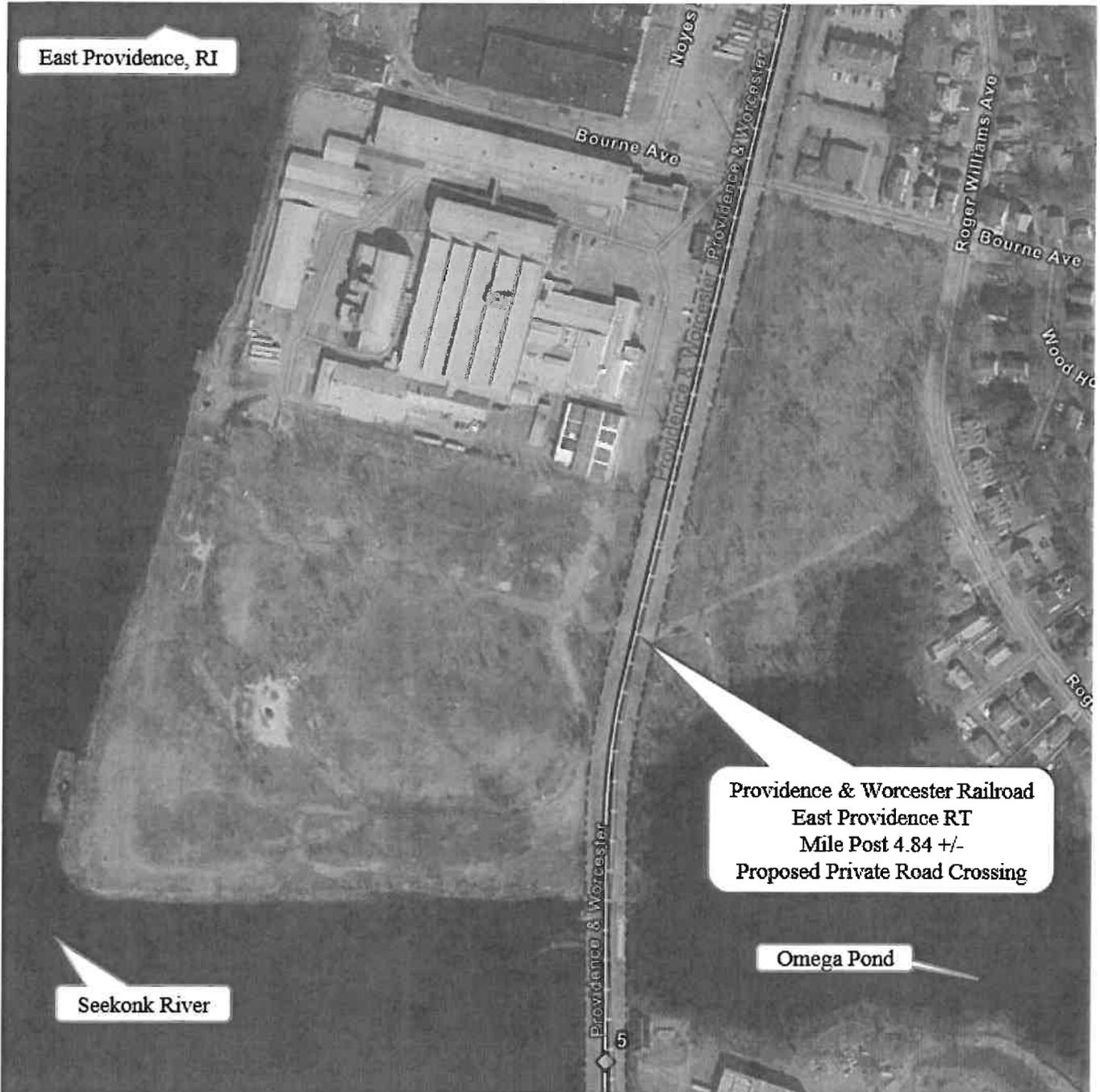
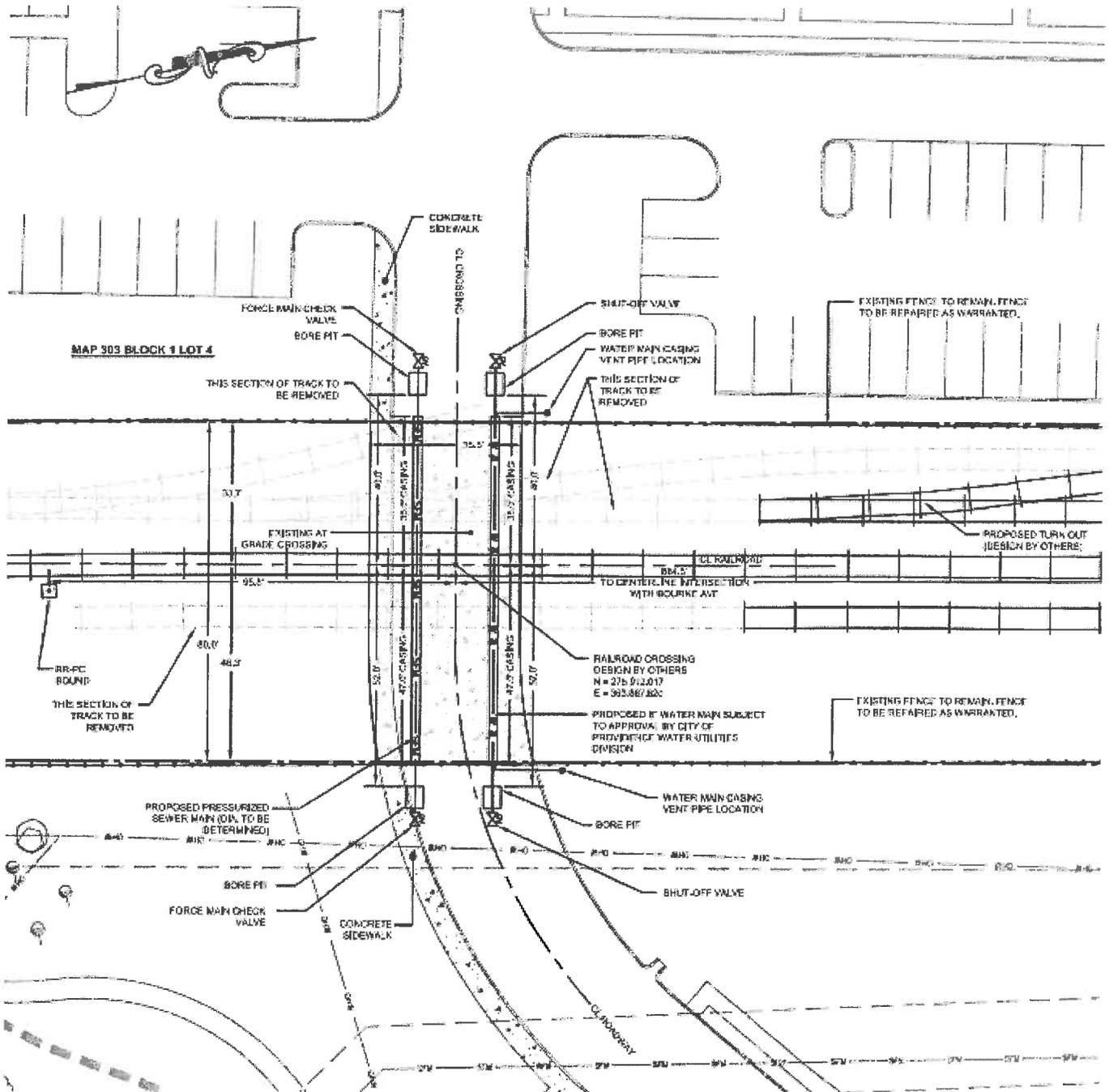


EXHIBIT B

East Providence, RI – GPS 41.840477, -71.368607



ACCESS ROAD PERMANENT CROSSING SITE PLAN
SCALE: 1" = 20'

EXHIBIT C

(a) LICENSEE shall, at its own cost and expense, prior to entry onto LICENSOR'S property, procure and thereafter maintain throughout the term of this Agreement the following types and minimum amounts of insurance:

(i) Public Liability or Commercial General Liability Insurance ("CGL"), including Contractual Liability Coverage and CG 24 17 "Contractual Liability – Railroads" endorsement, covering all liabilities assumed by LICENSEE under this Agreement, without exception or restriction of any kind, with a combined single limit of not less than Two Million Dollars (\$2,000,000) for Bodily Injury and/or Property Damage Liability per occurrence, and an aggregate limit of not less than Six Million Dollars (\$6,000,000) per annual policy period. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the LICENSOR INDEMNITEES and RI DOT and shall name the LICENSOR INDEMNITEES and RI DOT as Additional Insureds.** An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section but must "follow form" and afford no less coverage than the primary policy.

(ii) Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) for Bodily Injury and/or Property Damage Liability per occurrence. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the LICENSOR INDEMNITEES and RI DOT and shall name the LICENSOR INDEMNITEES and RI DOT as Additional Insureds.**

(iii) LICENSEE shall maintain Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury by Accident, Each Accident; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Policy Limit; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Each Employee. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the LICENSOR INDEMNITEES and RI DOT.**

(iv) **Prior to construction within 50' of the railroad tracks,** LICENSEE shall purchase Railroad Protective Liability Insurance naming the LICENSOR INDEMNITEES and RI DOT as the named insureds with limits of Two Million Dollars (\$2,000,000) each occurrence and Six Million Dollars (\$6,000,000) aggregate limit. The policy shall be issued on a standard ISO form CG 00 35 12 03 or, if available, LICENSEE may be able to obtain such coverage from LICENSOR.

(b) The following general insurance requirements shall apply:

(i) The specified insurance policies must be affected under standard form policies underwritten by insurers licensed in the state where work is to be performed and carry a minimum Best's rating of "A-" and size "Class VII" or better. LICENSOR reserves the right to reject as inadequate any insurance coverage provided by an insurer that is rated less than the ratings specified in this section.

(ii) All coverages shall be **primary and non-contributory to any insurance coverages maintained by the LICENSOR INDEMNITEES and RI DOT.**

(iii) All insurance policies shall be endorsed to provide LICENSOR and RI DOT with thirty (30) days prior written notice of cancellation, non-renewal or material changes.

(iv) LICENSEE shall provide LICENSOR with certificates of insurance evidencing the insurance coverages, terms and conditions required prior to commencement of any activities on or about LICENSOR'S property. Said certificates should reference this Agreement by date and description and shall be furnished to LICENSOR at the following address, or to such other address as LICENSOR may hereafter specify:

Providence & Worcester Railroad Company
C/O Genesee & Wyoming Railroad Services, Inc.
13901 Sutton Park Drive South, Suite 270
Jacksonville, FL 32224

(v) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:

(1) The retroactive date shall be prior to the commencement of the work.

(2) LICENSEE shall maintain such policies on a continuous basis.

(3) If there is a change in insurer or policies are canceled or not renewed, LICENSEE shall purchase an extended reporting period of not less than three (3) years after the contract completion date.

(4) LICENSEE shall arrange for adequate time for reporting of any loss under this Agreement.

(c) LICENSOR may require LICENSEE to purchase additional insurance if LICENSOR reasonably determines that the amount of insurance then being maintained by LICENSEE is insufficient in light of all relevant factors. If LICENSEE is required to purchase additional insurance, LICENSOR will notify LICENSEE. Failure of LICENSEE to comply within thirty (30) days shall be considered a default subject to termination of the Agreement.

(d) Furnishing of insurance by LICENSEE shall not limit the LICENSEE's liability under this Agreement but shall be additional security therefor.

(e) The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

(f) Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at LICENSEE's sole risk.

(g) If contractors are utilized, LICENSEE agrees to require all such contractors to comply with the insurance requirements of this Exhibit C.

EXHIBIT D

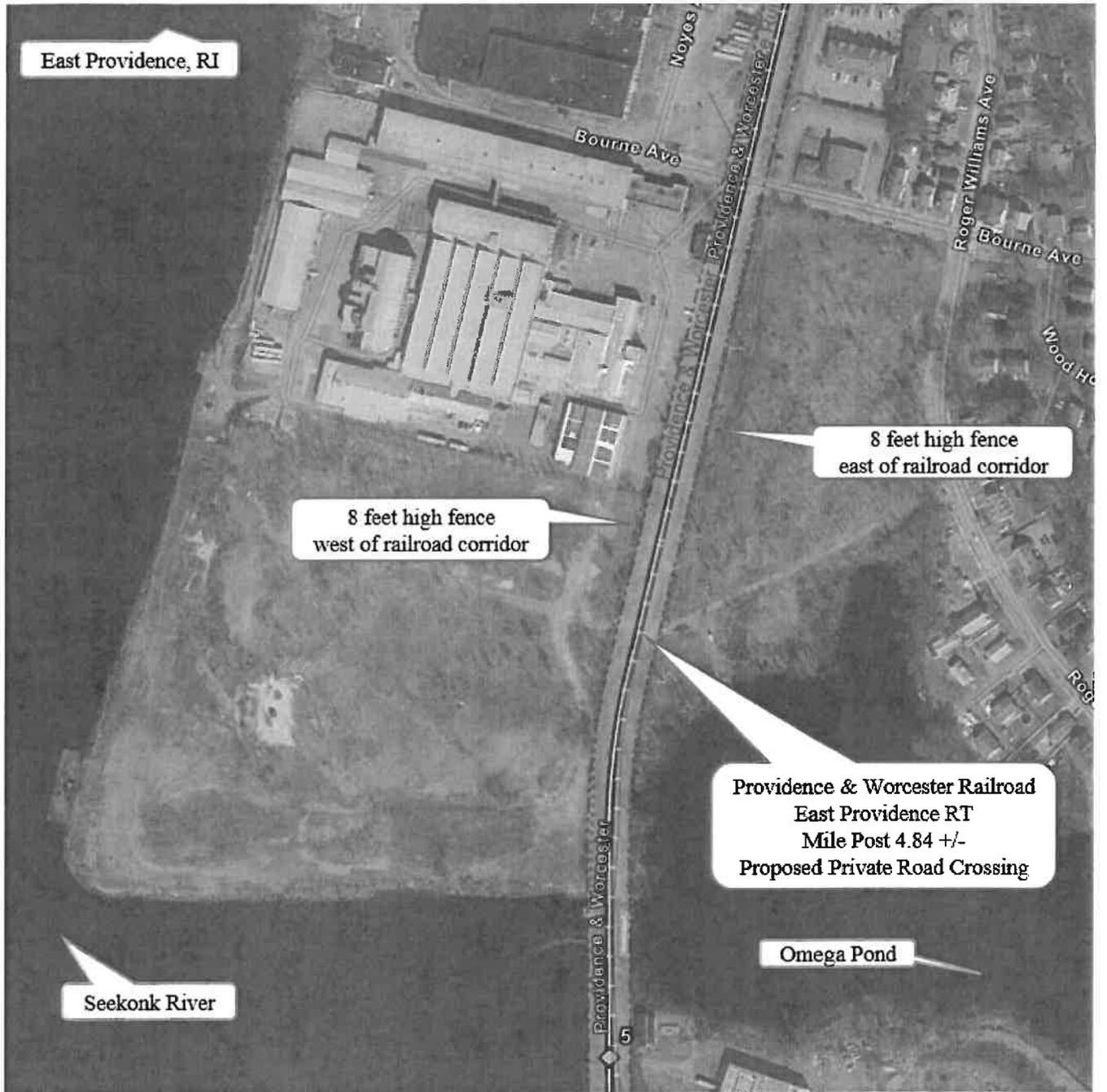


Exhibit E

Section 1.07 – Railroad Flagging Requirements

Summary

In the interest of public safety and the safety of the Railroad's and project sponsor's employees and property, the Railroad will work cooperatively with agencies, consultants, contractors, and others who need to access railroad property when work brings them in close proximity to active railroad tracks to determine the appropriate flagging services needed and to make arrangements for those services.

Flagging services may only be performed by personnel qualified by the Railroad who are trained in the proper procedures related to rail operations and safety requirements, familiar with rail operations and procedures in a project area and able to communicate directly with dispatching personnel and train crews.

All costs and expenses associated with railroad flagging services are the sole responsibility of the agency, consultant, or contractor, as applicable.

Conditions

The following are conditions that may require the use of a flagman by the Railroad:

- When any entity is working on, near, or adjacent to active railroad tracks.
- When an outside party is using railroad property or performing operations that may affect railroad property or facilities (including occasions when a party has been given express permission to enter railroad property or perform such operations under the terms of the applicable contracts).
- When work off railroad property has the potential to impact railroad property or operations.
- When off-highway construction equipment is crossing the railroad at a private or public crossing.
- When oversized equipment or highway vehicles are to cross the railroad at a private or public crossing.